Public Utilities

FORTNIGHTLY

April 1, 1943

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

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The lasting, attractive finish not only reflects Nick's countenance but also is an outward indication of fine workmanship throughout I-T-E switchgear.

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Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

Advertising Section

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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Pages with the Editors

We are not so sure that a good many of the postwar plans we see blossoming along with the early flowers this spring are really the result of planning, or what the British economist, Sir Arthur Salter, has dubbed "improvising." Some of the planners seem to start out with their own ideas, chiefly ideological, of how they would like the postwar world to be; then they proceed from that premise to determine the ways and means whereby all nations, including our American system of private enterprise, can be made to conform.

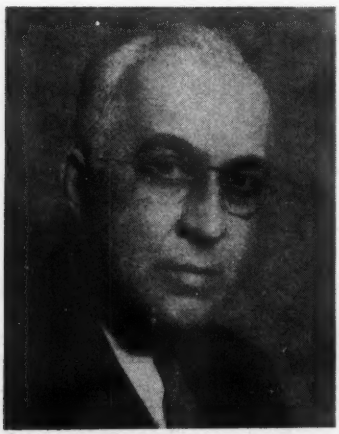
Indeed, some of the postwar planning reminds us of a cynical remark once attributed to former President Grover Cleveland. While some may dispute the claim that Cleveland was one of our ablest chief executives, few students of history will deny that he was certainly one of the "strongest." Like most "strong" executives, he was often impatient with the niceties of legal procedure. And on one occasion he is said to have absent-mindedly requested his attorney general, concerning a certain action he had already taken, to "find out how I did this legally."

In this issue we present a rather cynical appraisal of some of the postwar planning that is going on inside and outside of Washington. The author of this article, which begins on page 406, is Ernest R. Abrams, well-known writer on business and economic subjects, now residing in New York city.

MILLARD MILBURN RICE

Is the people's right to public service paramount to labor's right to strike?

(See Page 399)



ERNEST R. ABRAMS

Is industry winning the war so that the radicals can make the peace?

(See Page 406)

Another early growth of public confusion this spring seems to be in the field of Official Utterances. The blundering business executive or politician of yesteryear, who used to dodge responsibility for making an unfortunate remark by saying that he was "misquoted," has given way to a new prototype. He is the official who advances to the microphone or some other public forum, dignified by the cloak of his governmental authority, and thereupon gives voice to his own ideas about this and that—ideas which otherwise might well attract no attention whatever. But when the clamor breaks out the same official removes the cloak of his office and tells the world that he was speaking for himself alone.

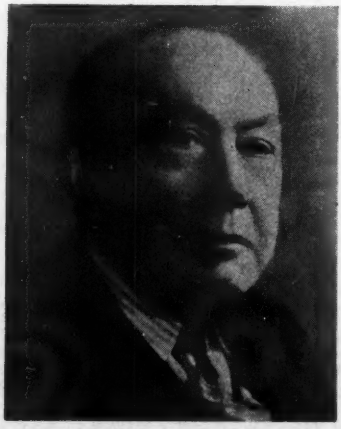
We have had some unfortunate examples of this recently in the diplomatic field and it is

pretty hard at times to determine whether Vice President Wallace is talking as the No. 2 official of the United States government or simply as Farmer Wallace's boy, Henry, who used to like to sit around a warm stove of a chill evening and sound off in the time-honored cracker-barrel tradition.

IN our own field of public utility regulation we have had a recent example of this new brick-dodging technique, which we might call the Oratorical Strip Tease. Several weeks ago, before the public utilities commission of the District of Columbia, counsel for a Federal government department told the commission that if the commission did not reduce electric rates in the city of Washington the Federal government would forthwith look into the possibilities of government ownership, seizure of private properties under certain "war powers," and other remedies.

WHEN the opposition began to protest that this was, in effect, holding a gun at the umpire's head, the same attorney politely removed his robe of office and told the commission (on a subsequent appearance) that he was "speaking for himself alone," not the Federal government. He added he was merely voicing personal opinions that he had held for the past twenty-five years. It is a fair question whether, if the attorney had written his personal opinions in a book issued under his own name, he would have sold much more than 25 copies.

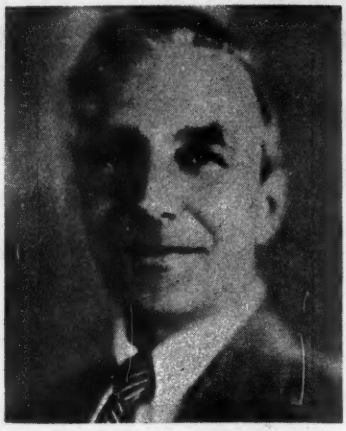
WE don't know just what can be done about preventing the Oratorical Strip Tease. But the FCC has given us an idea—in its regulations for broadcasting stations. Such stations are now required to give public notice whether or not the music they broadcast is from recordings or real life musicians.



HERBERT COREY

The government's quarrel with utilities is beginning to resemble the case of Wolf VERSUS *Lamb.*

(SEE PAGE 414)



JAMES H. COLLINS

If you miss your neighborhood dining car some day, look on the car track for it.

(SEE PAGE 420)

INCIDENTALLY, a recent exercise of so-called "war powers" by the Federal government in the utility field has attracted considerable attention. It was the case of the Puerto Rican utility expropriations, previously noted in these pages. Now that the government has seized the Puerto Rican utilities, it is pretty apparent what the threats being uttered elsewhere about "war powers" refer to. In this issue HERBERT COREY, Washington newspaperman and author, gives us an account of the Puerto Rican seizure.

JAMES H. COLLINS, whose article on transit rejuvenation begins on page 420, is a well-known magazine writer and editor, now residing in Hollywood, California.

MILLARD MILBURN RICE, whose article on the right of utility employees to strike also appears in this issue, is another veteran magazine contributor whose name will be readily recalled by so many of our readers who also scan the pages of such esteemed contemporaries as *The Saturday Evening Post, Collier's, Nation's Business, Barron's, Forbes,* and so forth. An accountant by profession, MR. RICE is now an official of the Woodbine National Bank of Woodbine, Maryland.

THE next number of this magazine will be out April 15th.

The Editors

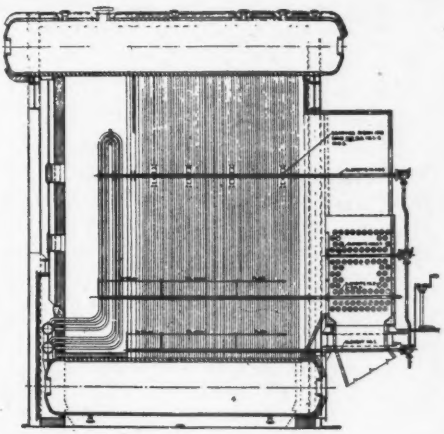
In This Issue

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 65–128, from 47 PUR(NS)

Another Example of VULCAN VERSATILITY *in Soot Blower Design*

Vulcan unit makes notable 4 year record in latest design, twin furnace Foster Wheeler steam generator installation at Oil City, Pa., station of the Keystone Public Service Company, operating on fuel relatively high in ash having a low fusion point.



Vulcan unit in twin-furnace Foster Wheeler steam generator completes 4 years' service with NO TROUBLE AND NO MAINTENANCE.

... This despite unusual problems presented by novel boiler and furnace design.

... As the drawing shows it was impracticable to install soot blowers from the front of the boiler as the furnace construction precluded installation of conventional type of elements and bearings to provide necessary protection and support.

... Hence, entry was made at the back necessitating carrying the elements a distance of about 26 ft., through the economizer and boiler tube banks to the superheater.

... Passage through high temperature, intermediate temperature and relatively low temperature zones, plus the factor of exceptional length, greatly complicated the problems of securing adequate thermal protection, dependable support, and at the same time provide for expansion and contraction without danger of cutting tubes.

Solution was found by using HyVULoy element section for the high temperature area, VULcrom element for the intermediate, with the balance steel; and providing specially designed bearings to hold the members in such a way as to eliminate hazard of tube-cutting and directed expansion toward the back of the boiler, where it could be taken up by a suitable expansion joint.

... Because of the advanced design of this boiler involving new features in soot-blower design and construction, Vulcan engineers inspected the installation monthly for many months, but the engineering was so sound that no trouble of any kind developed—Results—Perfect Operation—Perfect Cleaning—Reasonable Cost —And—VULCAN SOOT BLOWERS WERE SPECIFIED when a duplicate Foster Wheeler twin furnace steam generator was recently ordered by Keystone Public Service Company.

... Whatever the characteristics of your boiler and setting, fuel, or load, Vulcan engineers can successfully solve any soot blower installation and operating problem involved. We invite your consideration of Vulcan service with respect to any soot blower need.

VULCAN SOOT BLOWER CORPORATION

DU BOIS, PENNSYLVANIA

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

JOHN J. SPARKMAN
U. S. Representative from Alabama.

"A bureaucrat is simply a government official we don't like."

RICHARD O. BOYER
Writing in New Masses.

". . . nations, like men, live by sense and die by nonsense . . ."

JAMES E. MURRAY
U. S. Senator from Montana.

"If centralization of business continues, the march of bureaucracy is bound to proceed unabated."

EUGENE E. COX
U. S. Representative from Georgia.

"Congress assuredly realizes that business, which means almost everybody, can be ruined by overtaxation."

EARL WARREN
Governor of California.

"After the war is over, Uncle Sam is not likely to put an umbrella over us to protect us from normal competition."

EDWARD R. STETTINIUS
United States Lend-Lease Administrator.

". . . food of ours, less than about three-quarters of a billion dollars' worth in 1942, and a relatively small part of our supply, was one of the most important weapons in this last critical year of war."

FREDERIC R. COUDERT, SR.
Member, New York State Bar Association.

"I find it difficult to be interested in elaborate schemes for world betterment that are not predicated upon human nature as it is and the understanding of history. The Utopian in his iridescent idealism and the isolationist in his lack of all vision may prove equally dangerous in the future."

WALTER E. CHRISTENSON
Associate editor, Omaha World Herald.

"If we, the people, don't resist, day by day, the insinuating power of the government directive, the time may come in America when every lawyer will work for the bureaucracy and every newspaperman will get his copy from the ministry of propaganda, and every citizen will get his marching orders from Washington."

EDITORIAL STATEMENT
The Wall Street Journal.

"There is no one good solution for the man-power problem, which is in fact a set of differing but related problems, for which a variety of solutions will have to be developed. No law will increase the number of workers in existence in the country; no bureaucratic activity will make their correct distribution a certainty."

RAYMOND MOLEY
Associate editor, Newsweek.

"Bureaucratic planning is not essential to the spread of American influence in the world. . . . We need little governmental machinery for the export of brains."

JAMES H. MCGRAW, JR.
President, McGraw-Hill Publishing Company.

"The mighty Pharaohs had less energy at their disposal in building their pyramids than is generated today by one single power plant."

THURMAN W. ARNOLD
Associate Justice of the United States Court of Appeals for the District of Columbia.

"The economics of opportunity means that every man in America must be free to take a chance, to gamble on his abilities or on the efficiency of his organization, and to win or to lose."

ROANE WARING
National commander, American Legion.

"The sovereign state must ever keep before it the fact that while it is willing to yield temporarily to the Federal government certain rights and privileges essential for the winning of the war, it must never lose permanently either in the war effort or in any other emergency those basic rights and powers which are the state's very bone and sinew."

JAY FRANKLIN
Columnist.

"I know now what I never fully realized before, that while government regulation is necessary to control traffic —whether on the highways, the stock exchange, or the labor market—government ownership, when divorced from considerations of private profit, is death to human freedom and the right of the individual to develop his own life without reference to the views of the bureaucrats."

EDITORIAL STATEMENT
The Wall Street Journal.

"Mr. Kaiser's suggestion of a war-time 'Inventions Pool' under control of a centralized Federal agency, both to be dissolved after the war, has a more or less attractive sound. . . . But an agency once born has more lives than a cat, and the tenacity of a limpet, or a barnacle, long after its supposed reason for existence has disappeared. We shall have abundant proof of this after the fighting stops. Before we add another to those we already have, we should be sure that we need it."

JOHN W. BRICKER
Governor of Ohio.

"Strong emphasis should be placed on the importance of immediate attention to the problem of administrative law. Unless every state is able to throw off the shackles of bureaucracy, representative government will not succeed. To the extent that bureaucracy is destroyed and time-tested standards of governmental policies are applied to administrative agencies, we shall be able to adapt our legal forms and our legal system to changing conditions. Only in that way shall we be able to keep faith with our sons who are fighting and dying that free representative government may live."

R&IE HI-PRESSURE CONTACT *Switching Equipment*

RVING THE ARTERIES OF INDUSTRY

Now, when War Production makes prior claim to the manufacturer's output, is the time to seek quality and service as never before.

It's good business—Patriotic business—to demand the maximum service from available raw materials.

With your sympathetic cooperation in plans and specifications, R&IE can help more by thereby eliminating many of the occasional production delays.

As you seek quality and Service, remember that R&IE has been a

SPECIALIST

for 31 years—in problems on Indoor and Outdoor SWITCHING EQUIPMENT.

RAILWAY *and* INDUSTRIAL ENGINEERING COMPANY

GREENSBURG, PA. . . . In Canada—Eastern Power Devices Ltd., Toronto

Cooperating 100% with the War Effort

THESE are the real footsteps to Victory . . . the marching feet of fighting men, now heard across the embattled continents. Yet these men cannot fight unaided. Each step a soldier takes needs the fullest backing here at home. We must sacrifice, we must work, we must save.

Here, for example, are four very simple conservation steps which you can take on the march to final victory. Follow them and make your storage batteries last longer. Buy to last and save to win.

STEP No 1 Keep adding approved water at regular intervals. Most kinds of local water are safe in an Exide Battery. Ask us if yours is safe.

STEP No 2 Keep the top of the battery and battery container clean and dry at all times. This will assure maximum protection of the inner parts.

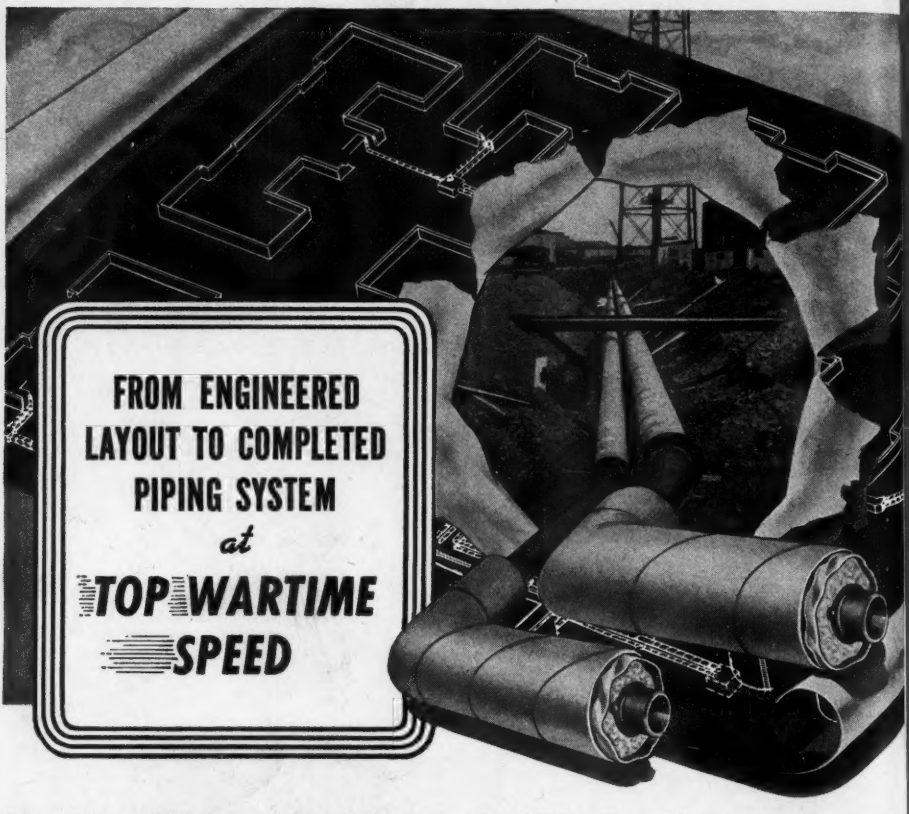
STEP No 3 Keep the battery fully charged—but avoid excessive overcharge. On batteries used for control service, check your D. C. control bus voltmeter to see that it is in calibration.

STEP No 4 Keep records of water additions, voltage, and gravity readings. Don't trust your memory. Write down a complete record of your battery's life history. Compare readings. Know what's happening.

If you wish more detailed information, or have a special battery problem, don't hesitate to write to Exide. We want you to get the long life built into every Exide Battery. Ask for Booklet Form 3225.

THE ELECTRIC STORAGE BATTERY CO.
PHILADELPHIA
The World's Largest Manufacturers of Storage Batteries for Every Purpose
Exide Batteries of Canada, Limited, Toronto

Exide
BATTERIES



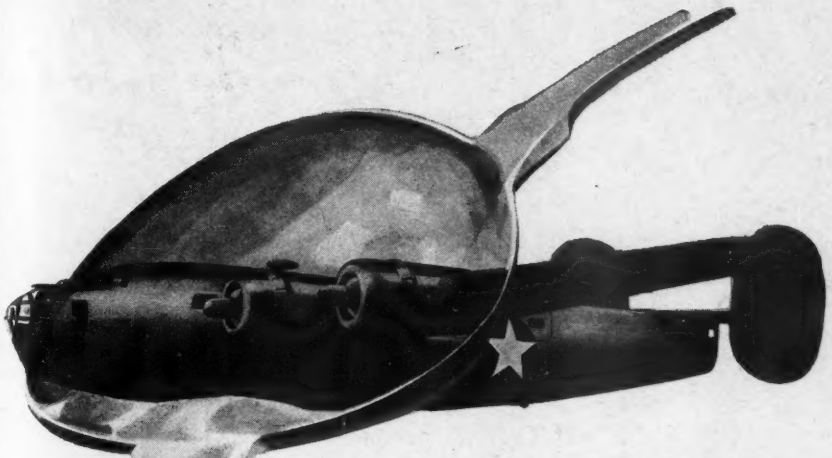
On projects vital to the war effort the urgent need for speed in construction points to Ric-wiL Prefabricated Pipe Units for steam, hot water, oil, hot or refrigerated process lines. • Ric-wiL Pipe Units are complete when they reach the job —pipe, insulation, protective covering. Field men couple or weld the pipe, insulate the joints and move on to the next joint. Man-hours are saved in the field and the installation is completed at a rate that can give no comfort to the Axis.

In addition, these units produce a permanent, low-maintenance system while using critical materials amounting to only 15% to 20% of their total weight . . . And they require for shipment only 20% to 25% of the space in available gondola cars that would be required for an equal footage of other types of conduit construction. • Speed is the essence of wartime construction—and Ric-wiL Prefabricated Pipe Units have proved a definite aid.

When Makeshifts Won't Do—**RIC-WIL**

Architects, Engineers and Contractors on war projects will find much helpful information in the Ric-wiL Engineering Data Book. Write . . . on your letterhead . . . for a copy.

RIC-WIL CONDUIT SYSTEMS FOR UNDERGROUND STEAM
THE RIC-WIL COMPANY · CLEVELAND, OHIO
AGENTS IN PRINCIPAL CITIES



"Baste Frequently!" We here at Robertshaw are giving that well-known cooking term a wartime meaning. To us, "Baste Frequently" means Baste the Axis – early and often.

"Baste Frequently"

And that's just what we're helping to do. From our years of experience in making precision devices such as thermostats, we've turned to the production of precision instruments for aircraft—devices our fliers are using this very minute to "Baste the Axis." And to help our boys "Baste Frequently," we're also producing fuses for hand grenades, primers and ignition cartridges for rockets, as well as boosters and shells for aircraft and anti-aircraft guns.

And with it all, you'll still find a few Robertshaw Thermostats coming off our production lines. They're only for Government projects though – thus keeping our hand in practice for peacetime requirements when that grand day arrives.

For High Achievement in the production of war equipment

ARMY E NAVY

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ROBERTSHAW THERMOSTAT CO., YOUNGWOOD, PA.

Let's get together TO HELP THEM!

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★ Neptune is doing this in two ways . . . directly, by producing war materials in our factory . . . and, indirectly, by cooperating with Water Departments to maintain that operating efficiency which plays such a vital part in maintenance of public health, fire protection and the supplying of war industries.

★ *If your Water Department has problems in which the Neptune Meter Company and its representatives can be of assistance, we are ready and eager to work with you.*

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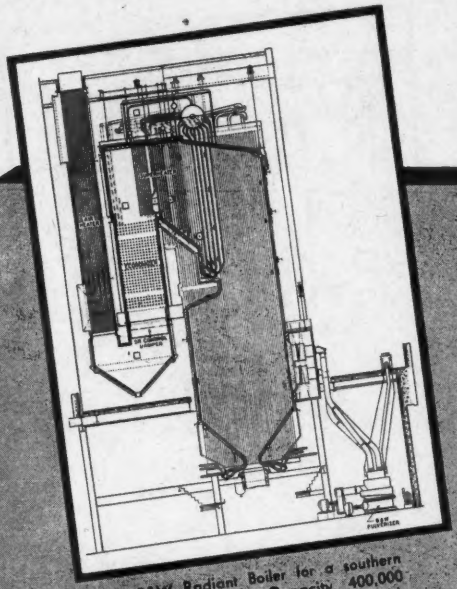
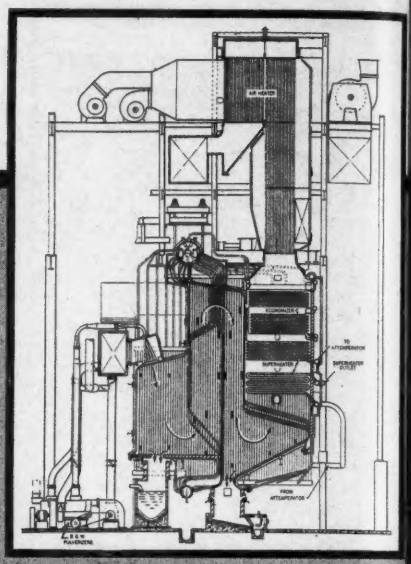
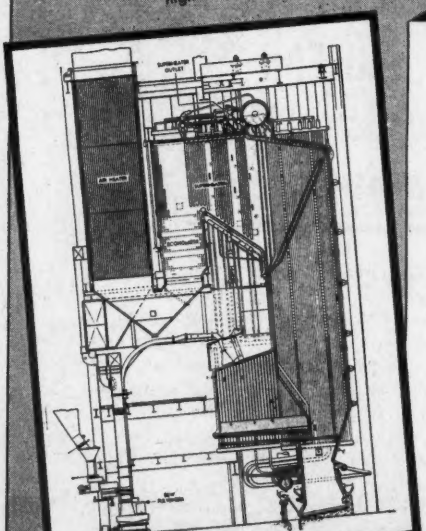


B&W Radiant Boiler for a southern central station — Capacity, 400,000 lb. steam per hr. — Direct fired with high-volatile southern bituminous coal.



B&W Open-Pass Boiler in an eastern central station — Capacity 350,000 lb. steam per hr. — Direct fired with high-volatile eastern bituminous coal.

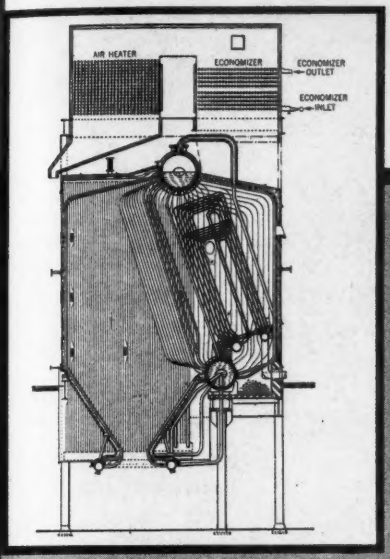


B&W Radiant Boiler in an eastern central station — Capacity 900,000 lb. steam per hr. — Direct fired with high-volatile eastern bituminous coal.

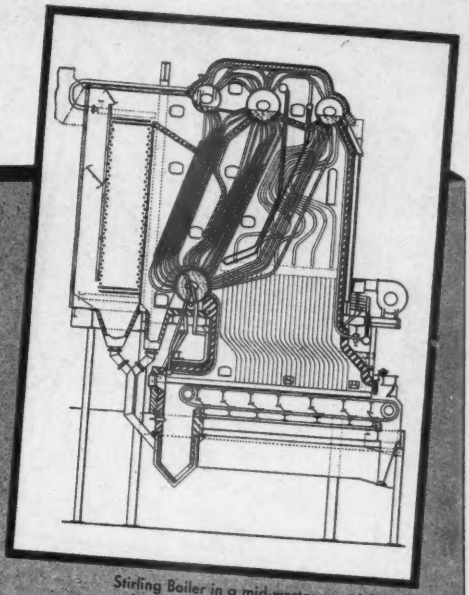
COAL MEETS THE
Pulverized and

Steam plants today must be operated in the interest of the war effort, releasing from use the fuels needed by combat units. This has placed on coal the burden of carrying today's production load. With coal, as with other fuels, it is vital that it be burned economically and with minimum interruption to service. In the field of coal burning, B&W can be of great service to coal users, because of its invaluable knowledge and experience in the combustion of this and other fuels and through the coal-burning equipment it has made available.

The B&W Direct-Firing System is the result of the Company's lengthy experience with pulverized-coal firing, an experience that dates back to the earliest applications to power boilers. This system is fully coordinated, from bin to burners; the ball-bearing type pulverizer and rotating-table feeder being



B&W Integral-Furnace Boiler for an eastern central station — Capacity 150,000 lb. steam per hr. — Direct fired with high-volatile Kentucky-bituminous coal.



Stirling Boiler in a mid-western municipal electric light plant — Capacity 125,000 lb. steam per hr. — Fired with high-volatile Indiana bituminous coal on a B&W Chain-Grate Stoker.

FUEL EMERGENCY-
Stoker Firing

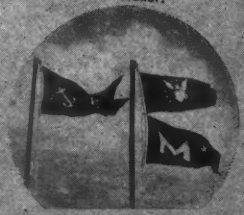
especially applicable to direct firing and to complete automatic control.

B&W Chain-Grate Stokers are widely used where economic considerations, size of boiler, and character of coal available make stoker firing advisable. These stokers burn a wide range of coals efficiently, are self-cleaning and low in maintenance.

B&W Water-Cooled Furnace Constructions have the diversity necessary for satisfying all the requirements of any method of firing, from supplying structural shape and strength, to promoting combustion and ash elimination in individual furnaces.

Complete B&W Boiler Units, such as those shown on these pages incorporating either method of firing and typical B&W Furnace Constructions, provide the means of meeting present-day fuel problems.

G-2357



The Maritime Victory flag and "M" burgee now float proudly alongside the Navy "E" at the Barberton Works. Each is an award for "outstanding achievement" and is "an honor not lightly bestowed".

BABCOCK & WILCOX

THE BABCOCK & WILCOX COMPANY
85 LIBERTY STREET, NEW YORK, N.Y.

Enough man-days were lost through accidents last year to have produced 300,000 light tanks. To help minimize such losses, this Company has subscribed to the National Safety Council's War Production Fund to Conserve Man Power.

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Torpedoes — Artillery Prime Movers
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Marine Corps Invasion Ice Chests
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THE KID FROM KANSAS

and the "Fish" that Flies

SOMEWHERE there is a kid from Kansas with ack-ack bursting around his ears. He slants down, waggles his wings to signal the squadron in, levels off to aim his torpedo. He sends it straight and true to its target.

Up ahead a Jap carrier squirms to escape. Her guns are blazing. Her destroyer escort is blasting away, throwing everything they've got point-blank at the Doom that comes riding fast as the torpedo bombers press home their attack.

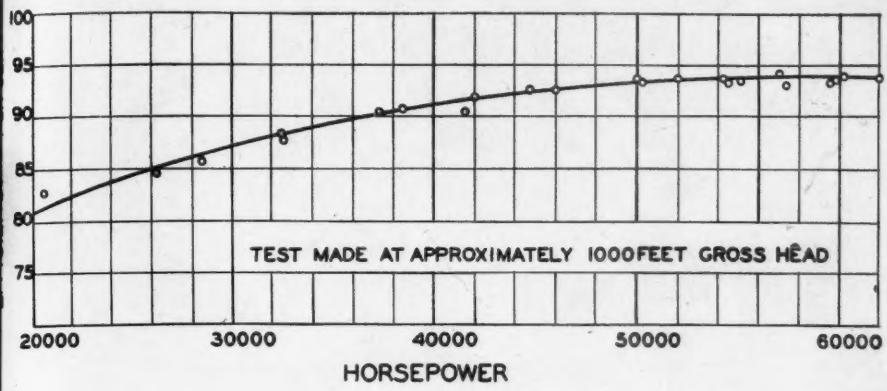
They're not counting risks, these wonderful kids from the U.S.A. And that's a thing we at Harvester never forget. For the Navy has given us an assignment which we regard as an honor—the production of aircraft torpedoes, one of the toughest of all precision jobs.

This torpedo, carrying hundreds of pounds of e plosives, has precision parts so small they can carried beneath a man's fingernail. There are pa in it so delicately poised that they are oiled wi a hypodermic needle.

That gives you a faint idea of the kind of j it is. And that's why the men and women Harvester are proud that in starting producti we beat our promise to the Navy by months.

To the boys who use these weapons we owe supreme debt. Every man and woman of us determined to see that that debt is paid.

INTERNATIONAL HARVESTER COMPANY
180 North Michigan Avenue — Chicago, Illi



FIELD TEST CURVE

for

50,000 H.P.—925′ NET HEAD—450 R.P.M.

VERTICAL FRANCIS TURBINE

Built by

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(Hydraulic Turbine Division)

Newport News, Virginia

Our facilities for building turbines, valves, rack rakes, gates, etc., are now in use for constructing ships for the Navy.

OF A *GOOD* CONDENSE

From the viewpoint of the turbine, the condenser is a mighty important adjunct to good performance. This Elliott condenser looks good from its turbine floor, and its very definite contribution to overall unit efficiency helps to make the turbine look good.

Through broad experience, Elliott engineers have developed and confirmed condenser design principles which insure the success of Elliott installations. We should be glad to discuss these principles with you in relation to the next condenser you plan.

ELLIOTT COMPANY
Heat Transfer Department, **JEANNETTE, PA.**
DISTRICT OFFICES IN PRINCIPAL CITIES

The Army-Navy E has been awarded to both the Jeannette and the Ridgway plants of Elliott Company.

ELLIOTT *builds good* **CONDENSERS**

Utilities Almanack

Due to war-time travel restrictions, conventions listed are subject to cancellation.

April

1	Th	¶ *Iowa Independent Telephone Association will hold meeting, Des Moines, Iowa, Apr. 15, 16, 1943.*
2	F	¶ *Missouri Association of Public Utilities will hold annual business meeting, Excelsior Springs, Mo., Apr. 16, 17, 1943.*
3	Sa	¶ *Illinois Telephone Association will convene, Chicago, Ill., Apr. 20, 21, 1943.*
4	S	¶ *National Electrical Manufacturers Association will hold spring meeting, Chicago, Ill., Apr. 20–23, 1943.*
5	M	¶ *United States Independent Telephone Association will hold executives' spring conference, Chicago, Ill., Apr. 22, 23, 1943.*
6	Tu	¶ *North Central Electrical Industries will hold annual all-industry conference, Minneapolis, Minn., Apr. 26, 27, 1943.*
7	W	¶ *Electrochemical Society opens meeting, Pittsburgh, Pa., 1943.* ¶ *American Water Works Asso., Canadian Section, convenes, Hamilton, Ont., 1943.*
8	Th	¶ *Midwest Power Conference starts, Chicago, Ill., 1943.* ¶ *American Institute of Elec. Engineers starts district meeting, Pittsfield, Mass., 1943.*
9	F	¶ *Missouri Valley Electric Association will hold annual engineering conference, Kansas City, Mo., Apr. 28–30, 1943.*
10	Sa	¶ *American Water Works Association, Pacific Northwest Section, will hold meeting, Bellingham, Wash., May 7, 8, 1943.*
11	S	¶ *American Bankers Association, executive council, opens spring meeting, New York, N. Y., 1943.*
12	M	¶ *National Fire Protection Association will hold annual meeting, Chicago, Ill., May 10, 1943.*
13	Tu	¶ *Nebraska Telephone Association opens convention, Lincoln, Neb., 1943.*
14	W	¶ *Atlantic States Shippers Advisory Board starts meeting, Rochester, N. Y., 1943.*

Harold M. Lambert

"Eternal Vigilance—"

Public Utilities
FORTNIGHTLY

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Should Employees of Utilities Be Allowed to Strike?

Capital invested for public service compelled to surrender certain rights in the public interest. The author asks why the same rule should not be applied to labor.

BY MILLARD MILBURN RICE

IF two men enter into an agreement whereby the first agrees to pay a certain amount of money to the second upon the procurement by the second of a desirable woman who will serve as mistress of the first, such a contract is unenforceable by either party to it for the reason that it is said to be "against public policy." Although "public policy" is a nebulous sort of thing, not very clearly defined, it is well recognized by the courts as a basis for the nullification of contracts contrary to it, and for the enforcement of such other contracts which may be necessary to it. Not so with the public interest.

The public interest in broken contracts, or in contracts which affect it adversely, has no such standing in court as public policy. This is notably true in labor disputes attended by strikes. It is true that the Supreme Court at one time expressed itself on this point in the following words through the late Chief Justice White: ". . . whatever would be the right of an employee engaged in a private business to demand such wages as he desires, to leave the employment if he desires . . . and by concert of action, to agree with others to

leave upon the same condition, such rights are necessarily subject to limitation when employment is accepted in a business charged with a public interest. . . ."[1] But this principle was never implemented, probably because of the growing power of labor.

Only as a war measure in a national crisis is the public interest defended by government in labor disputes, and then only in the interest of furtherance of war effort and not on the basis of public convenience or lack of it. Actually what is defended in such cases is public policy. Seizure and operation by government of plants closed or crippled by labor disputes has been resorted to on several occasions as a necessity to the prosecution of war effort. Seizure and operation of plants similarly crippled in peace time are practically unknown.

THERE has been slowly crystallizing, however, over a rather long period, a sentiment which demands that the public interest shall be protected at all times when the public is an innocent third party to disputes which cause interruption or stoppage of services upon which any large segment of the public has become accustomed to rely. Perhaps the most dramatic illustration of this, and one which perhaps did most to hasten crystallization of such sentiment, was the Boston police strike of 1919. It was, indeed, so dramatic that literally overnight it made a national figure of its principal actor, Calvin Coolidge, and even may have been responsible for his elevation to the presidency.

In his ultimatum to Samuel Gompers, then president of the American Federation of Labor with which the members of the Boston police force sought to ally themselves and to strike under its guidance, Coolidge enunciated a principle which shifted the entire emphasis of thought on such disputes. He said to Gompers, "There is no right to strike against the public safety by anybody, anywhere, any time."

That was almost a new thought in 1919, but it was immediately accepted by a majority of the public as sound. In spite of the bitter political attacks made upon Coolidge when he stood for reëlection as governor of Massachusetts, attacks which were based upon his attitude in this strike, he was reëlected by a greatly increased majority. The same attack upon him was made when he was a candidate for President of the United States, but again it was unsuccessful.

THE foremost liberal of that time, Woodrow Wilson, characterized the Boston police strike as "a crime against civilization." As of that period, Coolidge's method of settlement of the Boston strike established the principle that whatever justification there might or might not be for strikes in some industries, neither strikes nor threats of strikes could or would be tolerated when used by the police.

This principle was perhaps only an extension of the recognized field of public policy, but it was one of the first steps toward bridging the gap between the maintenance of public policy and the recognition of public interest. Obviously, the Boston strike was a strike against government, and today that kind of strike is completely outlawed by public opinion. Public

[1] Wilson *v.* New (1917) 243 US 332, 352, 61 L ed 755.

thought has undergone considerable change since 1919, else so sane and able a leader of labor as Samuel Gompers would never have attempted to defend the position his Federation took in that year. In 1941 we find *Collier's* saying editorially that "Any government that admits a right of its own employees to strike against it abdicates." (November 8th.) President Franklin D. Roosevelt, who can scarcely be accused of being a labor-baiter, has declared, "All government employees should realize that the process of collective bargaining, as usually understood, cannot be transplanted into the public service. . . militant tactics have no place in the functions of any organization of government employees."

THIS article is not an attempt to trace the whole course of veering thought upon the subject of the public interest when the public is an innocent third party to disputes between employer and employee. What has been said thus far, however, is intended to serve as a basis for the application of this trend to privately owned public utilities in their relationship to their employees.

It is certainly a carrying of coals to Newcastle even to remark in the pages of such a publication as this that privately owned public utilities are hedged about by governmental agencies with more regulations—and in certain directions are granted greater privileges—than other private enterprise. It is perhaps almost equally platitudinous to point out that there has been a progressive and increasing tendency of broader governmental agencies to control utilities. That is illustrated by the fact that in many cases local franchises to utilities can be granted by the local government of the territory served by the utility only upon a certificate of public necessity or public convenience by a larger regulatory body, generally a state regulatory board. What was once a purely local contract between a local government and a public utility now has been broadened into a matter of statewide public interest.

THE attitude toward public utilities as expressed through governmental regulations has long been that public utility service is "affected with a public interest." This is most clearly recognized by the monopolistic privileges granted to utilities in the public interest. It is most apparent to utility ownership and management in rate regulation. Rates which are allowed to be charged are so set—theoretically, at least, in the public interest—that a very limited return upon the capital invested is allowed. Ordinary private enterprise may change its policies, its prices, its customers, almost at will. The public utility must be meticulously careful to charge all customers the same price for the same

¶ "ONLY *as a war measure in a national crisis is the public interest defended by government in labor disputes, and then only in the interest of furtherance of war effort and not on the basis of public convenience or lack of it. Actually what is defended in such cases is public policy.*"

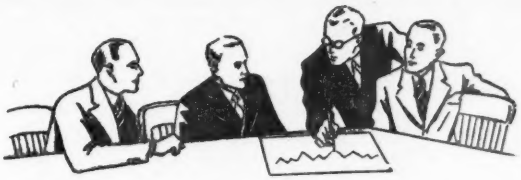
service, must serve all within its service field who apply to it, and must adhere to a fixed policy of service until permitted by a regulatory body to change. All these things set utility service apart—charge the utility with a definite obligation to the public interest.

While utility service rates as set by regulatory bodies are very definitely limited there is, on the other hand, an implied, if not actually understood, obligation on the part of regulatory bodies to revise rates, if necessary, so that a reasonable return on invested capital shall be maintained. While this is not an implied guaranty of reasonable profit it is as far as government regulation can go in assuring that such a profit can be earned. This "opportunity" to earn a reasonable profit, so to speak, is granted not because of any magnanimous impulse on the part either of the public or the regulatory bodies, but solely for the purpose of promoting continuous utility service *in the public interest*. Without it private capital would never be ventured in utility investments under the restrictions imposed. The investment character of securities of even moderately well-managed utilities is not only a tribute to management, it is also grounded in the implication of an assurance of reasonable return on invested capital.

BUT there is one great gap in the hedges which have been built around public utilities in the public interest. That is the failure to provide for continuous service in the event of disputes between the utility and its employees. Utility service is still exposed to the threat of complete stoppage by strikes. The very monopolistic character of utility franchises, and hence of utility service, demands that this gap be closed. In the case of ordinary competitive businesses, not limited to a definite territory, but competing with other similar businesses in the same territory, the stoppage of service or the closing of the business because of labor disputes causes inconvenience to the public which is for the most part minor. Patrons of a laundry or cleaning establishment which is closed can generally get their work done by other similar competing establishments. Users of a certain kind of bread can be supplied by other bakers. And it would work no great hardship on the users of trade-marked packaged breakfast food to be obliged to change brands temporarily.

The public interest in continuance of these and similar types of businesses is admittedly considerable, but it is by no means vital. Utility service is vital to individual convenience and community life, and there are no competitors in the same field to supply customers deprived of service; hence the high desirability, for the public interest, that utility service be insured against every form of stoppage. Almost the only stoppage not yet provided against is that resulting from labor disputes.

STRANGELY enough, in the case of municipally owned utilities, the position in this respect is rather clear cut. Mayor Fiorello LaGuardia, who, like President Roosevelt, cannot well be accused of antilabor sentiments, has taken the position with respect to transit employees of the city of New York that they have no right to strike against



Attitude toward Public Utilities through Governmental Regulations

"THE attitude toward public utilities as expressed through governmental regulations has long been that public utility service is 'affected with a public interest.' This is most clearly recognized by the monopolistic privileges granted to utilities in the public interest. It is most apparent to utility ownership and management in rate regulation. Rates which are allowed to be charged are so set—theoretically, at least, in the public interest—that a very limited return upon the capital invested is allowed."

their employer. Since the employer in this case is a municipality, and hence government, it is possible his stand is taken on the same ground as that of Calvin Coolidge in 1919—that there is no right inherent in labor to strike against government. But whatever the actual reason, the result is the same.

Moreover, the War Labor Board has recently ruled that it has no authority over labor union disputes involving municipal utility functions in three separate communities. In one of these disputes, that of utility workers in Omaha, Nebraska, the utility is organized separately from the municipality, which is obviously drawing a line very close to the question as to whether government, as such, is involved, or merely the public interest. No doubt, the WLB would be quick to disavow any intention to disqualify itself in other than governmental disputes with labor, but the implication draws very close to the issue raised with respect to the right of employees of any utility to conduct their relations on the same lines as those of non-utility industries.

THESE facts raise the very interesting and pertinent question as to why that part of the public which happens to desire to be, or actually is, served by municipally owned utilities should enjoy any greater protection from stoppages of its utility services by reason of labor disputes than that other, and larger, part of the public which is served by privately owned utilities. The public interest is identical in the two instances. It is no less hardship upon the people in the one community than in the other to be deprived of their utility services.

The obvious retort of one very vocal

group—both inside and outside of government—to this question would be that the way to solve this problem is by municipal ownership of all utilities. That solution would please this group immensely. Since it opens up the whole field of public ownership, any discussion of it is out of place in this article. In passing, it may be remarked that unless and until the people as a whole are ready to destroy all private enterprise, that is not the solution. And there is a simpler and more forthright solution for the problem as it stands.

SINCE capital invested in public utilities is obliged to surrender much of its freedom to regulatory bodies in return for certain guaranties, either expressed or implied, there should be nothing unfair or unjust in a similar surrender on the part of labor employed in public utility industries of certain of its privileges. Actually, it need be asked to surrender only one such, and that one which is in the nature of a special privilege. That is the right to strike and to maintain picket lines to enforce strikers' demands. The investor who puts his money into a public utility enterprise knows the limitations which will be placed upon his capital. He accepts these limitations in an attitude of *quid pro quo*.

An employee accepting employment with a utility would, in the public interest, likewise surrender the special privilege of enforcing his demand by striking. He already has, by reason of his employment by a public utility, a greater assurance of continued employment than the average employee in nonutility enterprises. The very desire for uninterrupted utility service, both on the part of the public and of regulatory bodies, creates that assurance. For much the same reason he is not affected by seasonal unemployment. Demand for utility service is relatively free from seasonal fluctuations; and hence labor is not subjected to seasonal lay-offs or to the stress of seasonal demands for increased service.

EVEN when one utility is merged with another, or its properties sold to other management, the consolidation or change of ownership affects few employees. The consolidation may necessitate a certain shifting and regrouping of a few supervisory employees in order to reflect the new management, but in both cases the rank and file—who are actually "labor" as the term is generally understood—are undisturbed in their jobs and may actually be unaware of any change so far as these jobs are concerned. The percentage of normal labor turnover in public utilities is much lower than the nonutility average. This is true to such an extent that utility employment already has much the same degree of stability as civil service; hence, the utility employee is already specially situated in his employment in comparison to the employees of most other lines of business.

Moreover, he need not surrender any of the broad principles of collective bargaining. Complaints, controversial matters, and every phase of employer-employee relations can be handled by employee representatives bargaining with management. The single requirement would be that they not come to the council table heeled with the strike weapon. That would have to be left permanently outside the door. Even the bitterest disputes can be set-

tled without violence if the disputants lay aside their weapons.

DETAILS of such a labor relations formula as this for the public utilities industry cannot be worked out overnight. There is no attempt to do that here. Rather, what is attempted here is to point out that the time for development and implementation of such a formula has arrived. It may or may not postulate some form of compulsory arbitration. The increasing recognition of the public interest in every controversy between labor and management has now reached the point where application of such a formula is clearly indicated. The quasi governmental functions of privately owned public utilities justify the action.

In the light of the stand already taken in the case of municipally owned utilities, these functions furnish the excuse, if one is needed, for the step to be taken. There is no justification for continuation of the threat of service stoppage in the one case when it is already barred in the other. Just as capital invested in public utilities is required, whether it likes it or not, to recognize the paramountcy of the public interest—and to serve it—so must public utility employees accept such recognition on their part and continue to serve uninterruptedly.

How shall such a formula be implemented? It can only be done by government—probably national government. National government is indicated as the agency because of the broadening tendency of governmental control of utilities already noted—the control of local utility problems by state regulatory bodies.

SINCE uniformity is a necessity to the success of the application of such a formula, and since there are forty-seven state regulatory bodies, only national government can act efficiently and with the uniformity demanded in such a situation. The steps already taken by the present national administration through SEC to regroup public utilities and reconstruct their capital structure—avowedly in the public interest—lay upon the administration the obligation to round out such a program in the interest of the public by implementing such a labor formula. Fairness to utility capital demands it, even if the interest of the public is ignored. But the public interest cannot be ignored in view of the trends already noted here.

It is time to place the public interest on the one hand, and the principle of fair dealing with public utilities on the other, above any political qualms such action might arouse in a government which has gone out of its way to favor labor against management. Full protection of the public interest in uninterrupted utility service can be secured by nothing less. It is time to implement the principle which is laid down in the words of Chief Justice White quoted above.

GEORGE MILLER, *drug clerk of Gary, Indiana, believed there might have been some justification in a customer's anger when, failing to get her nickel back after dialing a wrong number, the customer yanked the receiver off the hook and walked out of the store with it. But it was something of a shock when telephone company workers repairing the phone reported that the last coin deposited was a slug.*

Planning—But for What?

The author examines the plan of the National Planning Association of postwar regional resources development by the government and declares that if carried out it would mean effective bureaucratic control over the economic activities of the American people.

By ERNEST R. ABRAMS

POSTWAR planning is much in vogue these days. Not only are governmental and academic experts busily engaged in preparing "blueprints" for our future scheme of life, but innumerable trade associations and individual industries are outlining tentative programs to be put in effect when the shooting stops. There is, however, a vast difference in the approach of these two groups to the problem. Where industry is seeking to preserve, in so far as possible, that system of free enterprise which has been responsible for our transition in a century and a half from a wilderness to the richest nation on earth, government planners and their fellow travelers seem anxious to discard practices of the past, and to build a brave new world on a foundation of untried social theories and wishful thinking.

More than that, most government planners appear to resent any attempts at postwar planning by private enterprise. They feel, seemingly, that businessmen, with their tremendous stake in our postwar economy, should devote their efforts exclusively to winning the war, while they are left free to reconstruct American economy along lines in which private capital promises to play little or no part. Although paying lip service to democracy, the proposals they advance smack strongly of totalitarianism.

An example of the type of plan coming out of Washington today is outlined in considerable detail in a pamphlet entitled "Regional Resource Development, published last October by the National Planning Association. This, the sixteenth of a series, was prepared by Harvard's professor of economics, Alvin H. Hansen, and by Harvey S. Perloff who, according to a footnote, are solely responsible for the materials presented and the conclusions reached. The footnote further states that the authors invite "com-

ments and suggestions." They are likely to receive some.

THE National Planning Association, however, is not a government agency. It is a nonprofit research organization, supported in part by contributions from some of the largest corporations in the land. Moreover, a foreword in each of its publications states:

> *The main objective* of the National Planning Association is, by foresight and the coördinated use of existing knowledge, to study and recommend for consideration plans for coping with the future. In doing so it always bears in mind that the guiding principle is the achievement by democratic means of the highest possible material and cultural standard of living for the whole people.

On the other hand, it is worth noting that Dr. Hansen, who is well known for his espousal and further development in this country of the academic philosophy of John Maynard Keynes, the British economist, and who has prepared at least one of the reports issued by the National Resources Planning Board, a government agency, is chairman of NPA's executive committee; that Hansen's philosophy, by the way, is that Federal spending and investment are basically important in curing the inevitable interference from time to time with private investment, brought about by the unwillingness of private enterprise to assume risks in periods of depression or other economic disturbance with the savings of the people.

The major premise on which this regional resource development plan is based would appear to be that the Tennessee Valley Authority so far has achieved great success and that, on the basis of this "success," similar far-flung, multiple-purpose projects should be established in the drainage areas of practically all the major river systems of the land. Here's one of the things the authors of this plan say about TVA:

> The TVA is, on balance, a magnificent achievement. The endless litigation, the controversies over the electric rate "yardstick" and over details of administration have tended to cloud the picture. Yet the accomplishments of the TVA in agricultural improvement, in conservation, in stimulating economic opportunity, and in raising living standards in the region are challenging. This demonstration of the potentialities of regional coördinated planning and development is of paramount importance to the future of the country.

THE pith of their plan is this: Since "business opportunities can be created and the public welfare advanced by a comprehensive program of regional development," which "would stimulate private enterprise [and] conserve the nation's basic wealth for the use of future generations and, at the same time, provide a higher level of living to today's people," it is argued

> (1) That Congress should immediately establish regional authorities for the development, along TVA lines, of every major river system and its watershed in the land, except those in Atlantic coast regions;
>
> (2) that these regional authorities should be granted (a) "broad engineering - economic - social planning" powers; (b) authority to make comprehensive resource surveys; (c) the right to conduct research and to develop new processes, new industries, and new markets; and (d) power to operate multiple-purpose projects for the control and utilization of water and land resources;
>
> (3) that they should be granted authority to conduct such surveys, research, and planning studies as are necessary to bring these projects to an immediate "blueprint" stage;
>
> (4) That construction of key proj-

ects should be started as soon as the war ends;

(5) that, since these projects will be built with funds of the Federal Treasury, central financing and programming control should be exercised through the executive office of the President, as well as through policy directives from Congress; and

(6) that around two billion dollars annually for the next generation should be spent on these projects.

Before discussing the merits of this proposal, and its probable impact on our economic and political systems, suppose we examine TVA to see just how "magnificent" its achievement has been. That's the premise on which this plan is based.

ACCORDING to the January 1st press release of the Office of War Information, and data contained in the Federal budget for the 1944 fiscal year, presented to Congress by the President in January, TVA had an average depreciated investment in power facilities, accepting its own allocation of costs, of about $250,000,000 for the fiscal year ended June 30, 1942. The year-end figure was around $283,000,000. And in all probability, on the basis of its 1941 annual report, its average net 1942 investment in flood and erosion control, navigation improvement, fertilizer, and miscellaneous facilities approximated four-fifths that sum.

But of all its varied activities, the generation and sale of power alone produces any substantial revenue. If TVA ever becomes self-supporting, as its promoters claimed it would, it will be because the net earnings from power operations are sufficient to carry the whole ball of wax. Suppose, then, we look at the TVA income account for power operations alone during the 1942 fiscal year. Total electric revenues during this twelve months' period amounted to $25,329,954, while all revenue deductions, including a payment of $1,859,438 in lieu of taxes, aggregated $21,049,702. That left a balance, before interest charges, of $4,280,252 as operating income. After provision for net interest—interest on TVA's outstanding bonds, less interest received on loans to municipalities— its so-called "net income" from power operations was $3,673,352.

BUT this is, by no means, the complete picture of TVA's "magnificent achievement" in the 1942 fiscal year. Since the average cost of money to the Federal Treasury during that period was roughly 2½ per cent, the cost to the taxpayers of the nation of supplying a quarter of a billion dollars of capital for TVA's electric facilities was around $6,250,000, against which it earned an operating income of some

¶ *". . . most government planners appear to resent any attempts at postwar planning by private enterprise. They feel, seemingly, that businessmen, with their tremendous stake in our postwar economy, should devote their efforts exclusively to winning the war, while they are left free to reconstruct American economy along lines in which private capital promises to play little or no part."*

$4,280,000. That means that if TVA had paid its just share of the nation's interest bill, it would have sustained a loss of roughly $2,000,000. And if the total admitted investment in all of TVA's facilities was charged with 2½ per cent interest, its loss, on any accepted s t a n d a r d of accounting, would have been more on the order of $3,600,000, without consideration of the cost of rendering its many nonprofit services.

In addition, TVA's payments in lieu of taxes were at the rate of 7.34 per cent of gross revenues, from power sales, with payments made solely to state and local authorities. During the same period, however, the taxes paid by privately owned electric utilities to these same classes of political subdivisions averaged 8.14 per cent of gross, the country over. So TVA got off easy—to the tune of more than $200,000. Moreover, TVA paid no taxes whatever to the Federal government. But had it paid Federal taxes at the same rate as private power companies, or around 15 per cent of gross revenues, it would have had to kick in with another $3,800,000. Altogether, then, TVA's power operations alone forced the taxpayers of the country to subsidize it to the tune of more than $6,000,000 in the 1942 fiscal year, in order to permit it to show a "net income" of $3,673,352. Otherwise, its power operations would have shown a loss of well over $2,300,000. Can this correctly be termed a "magnificent achievement"?

THE authors of the regional resources development plan, however, have their own peculiar ideas of accounting. They say that the costs and benefits of development projects must be viewed "broadly from the standpoint of the whole economy." They say that the effective utilization of resources in any part of the land makes the whole nation richer; that raising the standard of living in any appreciable area makes for p r o s p e r i t y throughout the whole of the land; and that, therefore, it is the duty of the government of the whole people to develop our river systems, regardless of their cost or direct return.

Some of you, with security contracts outstanding under which their holders have a mandatory claim on proportions of revenues, doubtless will read with amazement the accounting philosophy of the authors of this plan, as they have outlined it in the concluding paragraphs of their pamphlet:

> These projects may be abundantly productive and profitable in terms of the real income and productivity of the nation as a whole and in terms of stimulus to private investment, business activity, and employment, *even though they may not return directly in fees and charges 100 cents on every dollar invested by the Federal Treasury.* (Italics supplied.)

That, of course, is a beautiful thought, but try to pay the butcher with it. And they continue:

> In fact, the indirect returns in increased tax revenues which result from higher levels of income and productivity, together with the direct charges, may bring total government returns well above total costs. In assessing benefits one must not forget the favorable and cumulative effects on private business in the areas under development, and the general increase in production and consumption of the people in the entire nation.

MAYBE SO; but the authors of this plan appear to have overlooked the fact that one of the "favorable and cumulative effects on private business" in the Tennessee river valley, resulting from the establishment of TVA, was to

Muscle Shoals at End of World War I

"At the time the armistice ending World War I was signed, all that existed at Muscle Shoals was an experimental nitrate plant, a 'commercial' nitrate plant that didn't get into operation until several weeks later, and which never reached a 'commercial' production stage, a partially completed steam-electric generating plant, and some minor excavations at the site of Wilson dam."

drive practically every privately owned, Federal - tax - paying electric utility from the area within transmission range of its power dams, and to force every taxpayer in the land to contribute to TVA's support.

So much for details of the plan itself. Suppose we turn now to an estimate of the probable effect of its execution on our economic and political systems. Stripped of its verbiage, the plan, in effect, proposes an invasion by the state of fields of private enterprise on so vast a scale that ultimately state socialism would appear difficult to avoid.

For it proposes the establishment of innumerable bureaus with powers sufficiently broad to affect materially the lives and habits of the American people. And its end result, in all probability, will be further regimentation.

Moreover, while the authors claim a beneficial effect on private enterprise will result from establishment of these regional authorities, they apparently have given little or no consideration to another condition which, coupled with their scheme, might spell the doom of free enterprise in this country.

This other condition involves the many industrial plants, financed and controlled by the Defense Plant Corporation, a subsidiary of the RFC, which recently have been constructed. Due to the pressing need by the war effort of vital materials and machines, and because privately owned corpora-

tions hardly could be expected vastly to expand their facilities to meet a temporary emergency, we now have plants for the production of steel, aluminum, chemicals, synthetic rubber, motor vehicles, aircraft, and a host of other materials and equipment, which have been financed and are now owned or controlled by the Federal government. What disposition is to be made of them, once hostilities cease? Will they be dismantled, or sold to private enterprise, or converted into "yardsticks" with which to measure the "fairness" of prices of similar privately produced commodities? The answer to this question promises vitally to affect the type of enterprise system under which we shall operate in postwar years.

THIS is not something to be tossed aside lightly. At the time the armistice ending World War I was signed, all that existed at Muscle Shoals was an experimental nitrate plant, a "commercial" nitrate plant that didn't get into operation until several weeks later, and which never reached a "commercial" production stage, a partially completed steam-electric generating plant, and some minor excavations at the site of Wilson dam. Yet, on the plea that the investment of the people must be protected, a coterie of public ownership enthusiasts in Congress foisted on the American taxpayers the far-flung TVA, whose operating losses they have been compelled to cover in their tax bills for nearly a decade.

Is a similar situation likely to develop with respect to the many plants for the production of basic materials and equipment now controlled by the Federal government? That possibility would be greatly enhanced by the establishment of numerous projects for the generation of subsidized "cheap" power. For once this war is at an end and industrial power demands decline, even long-established public power projects will be hard pressed to find an outlet for the energy they are capable of producing. And since the highest court in the land has held that publicly owned hydroelectric power, capable of being generated in connection with other legal activities of government, is the property of the people and should not be wasted, what more satisfactory market could these proposed multiple-purpose projects find for their electric outputs than government-owned industrial plants?

BE that as it may, there is one thing of which we may feel certain. The creation of a vast supply of government-owned hydroelectric generating capacity, which this plan contemplates, will lend great impetus to the socialization of the privately owned electric power and light industry in the United States. We know only too well what happened in the TVA service area. Suppose, then, we examine the formula which the authors of this plan set up for the many multiple-purpose projects which the adoption of their plan would create:

> To prepare such a program we would not have to set out into uncharted territory. Almost a decade ago, a national laboratory was established in the Tennessee valley to test a new method of carrying out a development program and to experiment with various schemes for furthering the welfare of a whole region. The TVA's operating and construction activities, its electricity program, its social and economic planning, and its legal and administrative structure offer valuable lessons from the decade of experience.

And how has TVA's "electricity"

program worked out? Today, privately owned utilities formerly rendering more than 90 per cent of the electric service in Tennessee have been driven into public ownership, while deals are pending for public acquisition of much of the balance. And in each of the years since its inception, the taxpayers of the entire nation have been called upon to offset TVA's losses through their payments for the support of the Federal government.

BUT there is more to this plan than its authors have written into it. What about other forms of energy? With hydro plants utilizing every drop of available water in 1942, they succeeded in generating only a little better than a third of the electricity consumed in the United States. Isn't socialization of our coal mines the logical sequence to development, primarily for power production, of every major river system in the land? And what about natural gas and oil?

Consummation of this plan will not come, however, without substantial and powerful opposition, if labor fully appreciates its threat to private enterprise. President William Green of the American Federation of Labor recently remarked that "if this country ever gets a system of governmental regimentation," which is the end result of all government planning, "labor will suffer most. Labor, therefore, is deeply interested in the preservation of private business." And Robert J. Watt, not only a labor leader of great influence in government circles but vice chairman of the National Planning Association as well, said, a few months ago, that "after this war I want no gigantic governmental Reconstruction Finance Corporation to finance business and dominate it; and I want no gigantic governmental Works Progress Administration to employ labor and dominate it." Yet, that's the logical end to the establishment of a multiple-purpose regional resource development project in the watershed of every major river system in the land.

ALTHOUGH significant, the basic thought expressed in these remarks is not new. Approximately one hundred fifty years ago, the authors of the *Federalist* observed that "power over a man's support is power over his will." Moreover, *The New York Times* remarked editorially on October 27, 1942, that "it is significant that Leon Henderson, who ought to know something about governmental controls, remarked only a week or so ago that he had never met a bureaucrat that he would trust with important production and distribution problems."

¶ *"... how has TVA's 'electricity' program worked out? Today, privately owned utilities formerly rendering more than 90 per cent of the electric service in Tennessee have been driven into public ownership, while deals are pending for public acquisition of much of the balance. And in each of the years since its inception, the taxpayers of the entire nation have been called upon to offset TVA's losses through their payments for the support of the Federal government."*

If totalitarianism, as we have seen its workings abroad, has taught us anything, it is that men cannot lose their economic liberties without losing every other liberty they prize. And establishment of a regional planning authority, with "broad engineering-economic-social planning" powers, in the watershed of every major river system in the land, particularly when these projects would be responsible to the executive office of the President, would mean effective bureaucratic control over the economic activities of the American people. As Senator Joseph C. O'Mahoney said, in his December 8th broadcast, "an unrestrained bureaucracy, subject to strong central leadership, would be an easy avenue to state socialism of either the Nazi or Communist variety." And as the London *Economist* of October 17, 1942, pointed out, a gradual spreading of state control, by way of capital investment in every corner of the land, would put the entire nation at the mercy of any political adventurer who could capture the political machine.

ADMINISTRATIVE agencies, by the way, are not inventions of the New Deal. The Interstate Commerce Commission, established some sixty years ago, is not even first on the list, although generally credited as such. Actually, the first of these law-making bodies by fiat was created shortly after the adoption of our Constitution. But their number has been increased vastly, and their powers expanded enormously, in the past decade.

Since problems of government, in which all members of Congress admittedly cannot be expert, were increased manifold by the business depression which this administration inherited, necessity demanded the appointment of a crew of self-styled experts, who had to start their jobs with powers sufficiently broad to meet and adjust all the problems that confronted them. And if the problems they faced were to be met successfully, a certain latitude in vision and authority was necessary. But, unfortunately, bright young men, fired with a lust of power, could not be held in line. According to *The New York Times* of January 27, 1943, Milton V. Freeman, assistant solicitor of the Securities and Exchange Commission, stated, perhaps in the heat of argument, "We do make the law. If this regulation is valid, it supersedes all laws that are contrary to it." Amazing, perhaps, but indicative of the ultimate goal of bureaucratic government.

"We have heard a good deal about the scorched earth policy in other lands," Sir Ernest Benn observed in the London *Electrician* of July 3, 1942. "We have heard too little about the scorched earth policy at home, the scorching process being done not by retreating soldiers, but by those who, having sent the soldiers on, have remained behind to destroy the ways and means for the preservation of which the soldiers are fighting."

¶ "WE *shall be far off on the wrong track if we allow impressive rows of figures to persuade us that postwar government expenditures must be great to maintain the so-called national income on a high level.*"

—EDITORIAL STATEMENT,
The Wall Street Journal.

Federal War Powers Act And the Utilities

Seizure of property of private public service companies in Puerto Rico, directed by the President under Second War Powers Act, after their seizure under the Lanham Act, held illegal.

By HERBERT COREY

SOMETHING has been going on—is going on—in Puerto Rico that merits scrutiny. If it works out the way it began then there is not a utility company in the United States that could not be popped into government ownership overnight. Little, big, medium. New York, Chicago, Marysville, Ohio.

All that is needed is a scratch of the President's pen.

Fortunately the story can be told by citations from a decision of the First U. S. Circuit Court, from letters of the President, and from the records of the committee of the U. S. Senate which was, at the moment of writing, trying to find out why Puerto Rico is unhappy on several counts. The writer cannot be charged with being a "pettifogger." Everything is on the record.

The situation is this:

There are in Puerto Rico three major electric utility companies. The first in importance, politically, is the Puerto Rico Water Resources Authority. It is publicly owned; it has the support of the public ownership bloc and of certain political elements in the Puerto Rico legislature. It will be recalled that Rexford Guy Tugwell is governor of Puerto Rico. He is a future planner on a big scale. He once wrote a poem about himself when he was still an undergraduate, in which he pledged himself to make the United States over to a pattern he liked better. He is under the direct control of Harold Ickes, Secretary of the Interior, and one of the chief proponents of public ownership of the utilities.

From time to time check-ups have been made on the millions Secretary Ickes has given and loaned to municipalities for the purchase or creation of publicly owned utility companies. The other, and privately owned companies, are the Puerto Rico Railway, Light & Power Company and the Mayaguez Light, Power & Ice Company.

NATURALLY the publicly owned Water Resources Authority desired to gobble up the privately owned companies. The manner in which it succeeded in so doing will be set forth. When the senatorial committee delved into this transaction Mr. Luchetti, representing the Water Resources Authority, did not brashly step forward to claim credit for this. He intimated by indirection that the incentive came from Washington. Senator Robert A. Taft of Ohio asked in his peculiarly metallic voice:

"You do not think we are so naïve as not to understand that this effort originated on the island?"

Mr. Luchetti conceded that there had been some talk.

"Were you ever asked by the Army and Navy to take over these companies for military or naval purposes?"

Mr. Luchetti could not remember any such request. The records show that someone, not named, asked the President to direct Federal Works Administrator Fleming to take the two privately owned companies, lock, stock, and barrel, under the provisions of the Lanham Act as amended. Fleming is a brilliant man, a brigadier general in the Army Engineers, and had no choice but to obey orders. The seized companies resisted through action in the U. S. District Court for Puerto Rico and lost their case. The United States was authorized to enter and take possession of the properties of the companies. The companies thereupon carried the case to the First U. S. Circuit Court, which is next in rank to the U. S. Supreme Court. The Circuit Court on November 27, 1942, set aside the judgment of the lower court. The major reason assigned was that the government lacked authority under the Lanham Act to seize the properties. They were ordered returned to their owners.

THE President thereupon directed that they be seized under the powers granted him in the Second War Powers Act. This raises a nice question. If the court rules that the President lacks authority to seize the companies under the Second War Powers Act, the validity of the act itself is questioned. Congress passed that act for the purpose of giving to the President every freedom to do what should be done in a dangerous national emergency. Swift action might be needed at any moment. If it should be found that a military need is served through the seizure of the two privately owned companies by the publicly owned Water Resources Authority, no legal or ethical objection could be found.

If it be found that no such military exigency existed, it may still be doubted whether any wrong that might have been inflicted on the two privately owned companies could be corrected, at the cost of questioning the extent of the President's powers under the Second War Powers Act. Heads I win, tails you lose.

Here are the facts as related in the decision of the First Circuit Court:

"On the island of Puerto Rico there are three separate major electric utility systems belonging respectively to the Puerto Rico Railway, Light & Power Company, the Mayaguez Light, Power & Ice Company, and the Puerto Rico Water Resources Authority. The first two were for the most part powered by fuel oil and the last for the most part by water."

Public Utilities in Army Camps

"THE Lanham Act, as amended in 1941, was designed to correct public service shortage in the newly constructed Army camps. The Army has taken lands equaling in area the five New England states plus the District of Columbia. Many privately and publicly owned utilities were completely unequal to the tasks suddenly thrust on them. Nor were these utilities financially able to enlarge their facilities, even if they could get priorities for the materials needed."

PETROLEUM Coördinator Ickes called to Fleming's attention that the supply of fuel oil might be interfered with by enemy action. Fleming's conclusion was, in the words of the court:

"The solution was the complete integration of the three systems so as to use the maximum of hydroelectric power and a minimum of steam power and thus conserve the fuel oil—These considerations were presented to the President, who made the necessary findings and judgment required by the Lanham Act and approved the taking of any steps to remedy the situation."

The Lanham Act, as amended in 1941, was designed to correct public service shortage in the newly constructed Army camps. The Army has taken lands equaling in area the five New England states plus the District of Columbia. Many privately and publicly owned utilities were completely unequal to the tasks suddenly thrust on them. Nor were these utilities financially able to enlarge their facilities, even if they could get priorities for the materials needed. The act, therefore, authorized the Federal Works Administrator, with the approval and on the direction of the President, to acquire improved or unimproved lands or interests by purchase, donation, exchange, lease, or condemnation where a need existed. By the letter of the law only "immovables" are included in this authorization. The President was not given authority to expropriate other forms of privately owned properties, such as generating stations, transportation facilities, and the like. Senator Maloney, who reported the bill, foresaw the possibility that the act might be stretched too far, and expressed his fear that the limited ($150,000,000) appropriation might be exhausted in attempts to meet the demands "unless very great care is exercised."

IN a letter—"directive" is the modern name for it—the President told Fleming to go ahead and relieve the acute shortage which "exists or impends" by whatever action seemed advisable as set forth in the Lanham act. Fleming had a choice of methods, but chose to condemn rather than to lease the privately owned properties.

It may be presumed that the President was not thoroughly acquainted with the situation. The demands upon his time are so many and so weighty that he is compelled to accept the representations of his subordinates in many matters.

A Senate committee consisting of Senators Dennis Chavez, Homer T. Bone, Robert A. Taft, and Allen J. Ellender has been investigating conditions, "including the question whether the island's miseries have been augmented by any inefficient management or lavish expenditures" by the Tugwell administration. The House Agriculture Committee once approved a bill appropriating $15,000,000 to relieve Puerto Rican suffering on condition that Tugwell handled none of the money. The Puerto Rico House and Senate, the three principal political parties, the Chamber of Commerce, the Farmers' Association, the Free Federation of Labor, and the resident commissioner from Puerto Rico to the United States have asked Tugwell's removal. Once both houses walked out when Tugwell undertook to address them in joint session. It has been charged that much of Puerto Rico's present woe is due to his faulty administration. These facts belong in another story.

THE First Circuit Court restored to the privately owned companies their properties on a variety of grounds. It held that the President had no authority under the Lanham Act to seize the movables; that any shortage of power which might exist was due to a failure in oil supply and not to faulty installations; and that it was the Puerto Rico Water Resources Authority that needed more power and not the private companies. These things will be covered by a subsequent quotation from the court's decision. The President thereupon shifted his ground, abandoned the seizure under the Lanham Act, and ordered Fleming to seize the properties for the second time, under the authority granted him by the Second War Powers Act.

"In the opinion of the First Circuit Court"—he put a good deal of snap in his words—"my knowledge of the facts, my finding of the existence of a shortage of (power), my approval of the particular project determined upon by you for the relief of these shortages, do not appear sufficiently in my letter of June 8, 1942—

"For the purpose of relieving and remedying such shortages, and for military, naval, and other purposes, I approved and do now approve the acquisition by purchase, condemnation, or otherwise (the properties, etc.) and their integration with the properties of the Puerto Rico Water Resources Authority, and authorize and request you to take such action as may be necessary."

BUT the First Circuit Court had ruled that no shortages had been shown. Here is an excerpt from the decision:

"We have difficulty in stating any coherent theory of the government's case. The President's finding is that there is an acute shortage of electrical and transmission facilities and other properties and facilities incidental thereto. There is no finding of a shortage of electrical generating facilities; yet the generating plants are taken over. There is no finding of a shortage

of transportation facilities; yet appellant's tramway system is taken over. It is not clear how a condemnation of the power plants and of the tramway system is supposed to relieve a shortage of electrical transmission and distribution facilities. It was suggested by counsel for the government that while the island of Puerto Rico, as a whole, may not need additional electrical distribution facilities, the Puerto Rico Water Resources Authority, which now furnishes power to about one-half the island, has insufficient distribution facilities to serve the whole island; that this is the shortage of public works the President found to exist."

The seizure did not relieve the situation due to a shortage of oil. The court reported:

"The District Court took judicial notice of the fact that there is a necessity to conserve fuel oil. But the President has not found that there is a shortage of electricity due to insufficient capacity of the hydroelectric generating plants on the island. It appears that appellant's system is interconnected with that of the Water Resources Authority, and thus is in a position to obtain additional power from that source if a shortage of fuel oil should necessitate a curtailment of output from appellant's steam-generating plant. Further, the statement submitted to the District Court, with every indulgence in its favor, hardly explains the condemnation of appellant's three hydroelectric power plants and its tramway system."

THE Circuit Court held that the Lanham Act does not authorize the seizure by eminent domain of "public works" as defined in the act. The only power of condemnation has reference only to "improved or unimproved lands or interests in lands."

"Significantly," according to the court, "§ 202 (b) includes authority to lease 'public works,' but not to condemn existing public works."

"Section 202 (c) provides another method by which needed public works may be supplied for the carrying on of community life; namely, by the making of loans or grants to public or private agencies. In view of the various methods specifically described, it cannot be implied that authority is given to acquire by eminent domain all the properties of an existing privately owned utility."

The final paragraph of the Circuit Court's decision is a denial of the government's authority to "take over by eminent domain appellant's whole electric power and tramway systems, and to effect a complete integration of the

"THERE *are in Puerto Rico three major electric utility companies. The first in importance, politically, is the Puerto Rico Water Resources Authority. It is publicly owned; it has the support of the public ownership bloc and of certain political elements in the Puerto Rico legislature. . . . The other, and privately owned companies, are the Puerto Rico Railway, Light & Power Company and the Mayaguez Light, Power & Ice Company.*"

whole with the properties of the Puerto Rico Water Resources Authority, a public corporation created by 'the legislature of the Puerto Rico.' "

"If," said the court, "we should affirm the judgment (of the lower court), that would leave the United States irrevocably committed to the payment of compensation for something which the Federal Works Administrator might never have dreamed of taking had he correctly apprehended the limited scope of his powers under the act. Taking appellant's lands and easements would quite effectively dismember a going concern, but it is not obvious that this would contribute to the relief of a shortage in electrical transmission and distribution facilities. Appellant will have to be restored forthwith to the full possession of all its properties."

THAT would seem to settle that. But there is more than one way to teach your grandmother how to suck eggs. President Roosevelt revoked Executive Order No. 9179, under which the proceedings had been taken which the court had overturned. He abandoned the Lanham Act entirely. He directed Federal Works Administrator Fleming to go ahead and seize the Puerto Rico Company's properties, and those of the Mayaguez Light, Power & Ice Company, under the provisions of the Second War Powers Act. This was Executive Order No. 9186. He was authorized to exercise the authority contained in Title II of the Second War Powers Act, 1942, as follows:

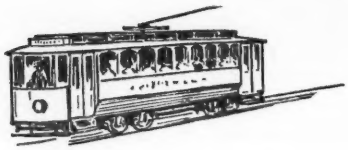
"To acquire, use, and dispose of any real property, temporary use thereof, or other interest therein, together with any personal property located thereon, or used therewith, that shall be deemed necessary for military, naval, or other war purposes."

That exercise of the presidential authority under the War Powers Act is still—at the moment of writing—before the court. But what do you think will happen?

Electricity and the Cost of Living

"IN a period when shortages began to appear in nearly every commodity, electric service to homes increased by nearly 2,000,000,000 kilowatt hours. While the cost of food rose 35 per cent, the cost of clothing 25 per cent, the entire cost of living 19 per cent—the cost of electricity fell 2 per cent! This decrease in the cost of electricity took place in the face of growing inflation and progressively rising taxes. The total of all taxes paid by the electric industry, Federal, state, and local, is estimated at $635,000,000 for the year 1942. During the four years, 1938 to 1942, taxes on private electric utilities have doubled, whereas revenues have increased by only a third. Taxes now consume 24 cents of every dollar collected from the user of electricity."

—EDITORIAL STATEMENT,
Industrial News Review.



Goat Glands for Old Cars

Back in the barn, Los Angeles Railway had 75 street cars of Coolidge days, waiting to be broken up for scrap. Now they are being rejuvenated with substitute materials and a lot of labor. And will carry 12 to 15 per cent of the biggest war loads thus far figured.

By JAMES H. COLLINS

Looking into the car shop, a year ago, to see what it had in the way of rolling stock for the increase in traffic that was coming, the Los Angeles Railway Company found 75 yellow cars that had been laid by for scrapping.

During the previous five years, it had been receiving new PCC cars of the latest design, with automobile features, and nearly a quarter-ton of rubber in each, for silencing and cushioning.

Out of a total of between 800 and 900 cars in service, there were 95 of the PCC's, and 30 more certain of delivery.

And that was all for war traffic that promised to double and continue through several years.

The only margin for expansion lay in the veterans condemned to the scrap pile, because this is a narrow-gauge system, and old cars of the same gauge were practically unobtainable. Some Pacific coast car companies with standard gauge managed to import venerable discarded cars from eastern cities, but LARy had to do what was possible with its own museum pieces—there just wasn't any more.

Since then, the company has been administering the goat gland treatment to these superannuated cars, and its shop mechanics, under superintendent J. T. Watts, have not only done a job but done it under war-time restrictions, making this do for that.

These old cars really date back only to the Coolidge administration, about 1924, and have hauled some notable crowds, including those who attended the Los Angeles Olympic games in 1932. But they look venerable, and recall what Kettering said about technocracy's promise of automobiles that would last a lifetime.

"When you get such an automobile," said Kettering, "don't drive it. Just put it in a glass case, and in five years you will find that it has aged as much as though you drove it half a million miles."

So, when it came to rehabilitating the Coolidge era rolling stock, it was good for many more miles. It has been going back into service right along, safe and efficient for its type, and capable of lasting out the war. It has added nearly 10 per cent to the company's car capacity, and under staggered hours, with every car hauling two loads night and morning instead of one, a good deal more. While traffic has increased the past year, bringing revenue out of the red, there has been rolling stock to spare, so far, and the rehabilitation job is still in progress.

First, the old car is stripped down to its skeleton, sometimes revealing a little decay of woodwork, but mostly rust in the metal sheathing around the running gear, and in dashboards.

Standing in the condemned bay for several years hasn't improved the motors a bit, and they come out for complete overhauling, together with the electrical gadgets that operate doors, and brake compressors, and so on.

The roof comes off, because it has cracked, and would leak in wet weather; the floor comes up; the windows are taken out, many cracked or broken; the seats go too; the wheels roll away to be treated for flat feet.

When rebuilding starts, the old car is little more than a framework, valuable mostly for firewood in normal times, but now representing real treasure trove in its materials, and the labor that originally went into its construction.

For every dollar cost on the new car, there is at least $2 value in lumber and wages, by 1943 cost figures. The best specimens, nearly all steel, are worth anything you want to imagine.

Discarded metal goes to the scrap pile, to be used again where possible, or otherwise find its way into the waste trade, to be melted up—this includes copper from obsolescent electrical work, and, under war rules, everything has to be reported, and some of it handed over.

For reconditioning new metal is necessary, and everything must be secured for maintenance, not new construction. Maintenance rules give plenty of leeway, and this is an honest maintenance project.

One of these old cars requires about seven miles of copper wire for rewinding and rewiring everything, including the lighting system, but yields an equivalent amount of old wire; so the net loss to the war effort is the plant and labor to make new wire.

Some new sheet metal is used for replacements, but much of the old metal can be cleaned, cut up into usable sections, and welded together to make a neat job.

The seats are taken to the cabinet shop, scraped, repaired, and repainted; the hardware is simple, and needs little replacement—maybe a little welding.

Rubber was not used in these old cars for such shock cushioning and silencing as the new PCC cars have, but there was more of it than appears on the surface in the window work. As new rubber cannot be obtained, the shops have developed a satisfactory substitute in heavy tape, which protects the window glass well enough for the duration, and even gives some silence.

Cotton duck was the standard material in roofs when these cars were built, and as that is not now obtain-

Consideration of Labor Cost

"LABOR cost is something that cannot be scrutinized too closely, because shop employees are constantly disappearing, going to the armed forces, and being drawn away to aircraft plants and shipyards. The cost for material is reasonable, because everything is salvaged. Brass screws that formerly went into the scrap are carefully saved, the old paint cleaned out of their heads for reuse, and even nails are used again if not too badly bent."

able, ordinary roofing paper goes on, to keep out the water in the land of little rain (average 15¼ inches for sixty-five years, half that of Chicago, one-third New York). What does most damage is the much-advertised California sunshine. There is a lot of it, three-fourths of daylight through the year, but it is not the heat in it, for the midsummer average temperatures are around 71 degrees—nor the dryness of a desert climate. It seems to be the actinic rays of a semitropical latitude that take materials apart. Roofing paper should last—anyway, there is plenty of it.

THE motors—four 45-horsepower, 180 horsepower per car—have ample capacity when reconditioned, and a reserve of power in their old age that should be more than sufficient for the period in which these cars will be depended upon for peak load service.

When they roll out of the shops, resplendent in new paint, they look almost new, as though Kettering's advice had been followed, and the company had kept them in glass cases since about 1924. And they are not mere paint-and-polish jobs, but rebuilt rolling stock of a quality that would undoubtedly be welcomed in some of the Latin American lands to which American street cars retire in their old age. After the war, due to their rehabilitation, there may be a market for them there, thanks to the work that had to be done on them for the emergency. In the normal course of events, they would not have paid for the labor cost of putting them in condition.

Labor cost is something that cannot be scrutinized too closely, because shop employees are constantly disappearing, going to the armed forces, and being drawn away to aircraft plants and shipyards. The cost for ma-

terial is reasonable, because everything is salvaged. Brass screws that formerly went into the scrap are carefully saved, the old paint cleaned out of their heads for reuse, and even nails are used again if not too badly bent. The straightening of a wire nail takes out its temper, and it is hard to drive.

CAR shop wages cannot be anything like those paid in shipyards, and the glamour of direct war work like shipbuilding is a powerful magnet in pulling men away from work that does not seem to be so closely connected with war efficiency.

But if men cannot be hauled to and from the shipyards every day in three shifts, that part of the war program would suffer. The shop employee who stays on has figured this out, and knows that he is in direct war work. Also, car shop jobs are stable, with retirement features—that holds men. And steady mechanics who have tried the excitement of shipyard work have not always felt happy and have come back. So, the work force has been held together; but the less said about the costs of rehabilitating these old cars, which takes so much handicraft, the better. Charge it up to the war.

As a public service, the salvaging of these veteran cars runs into impressive figures.

They have an average seating capacity of fifty passengers, and a strap-hanger capacity of at least one hundred. With pay-as-you-enter doors in the center, and doors at both ends, in the rush hours they can be quickly loaded by the company's emergency device of stationing auxiliary conductors at crowded points. These conductors collect fares from passengers at front and rear doors, while the regular conductor is taking care of the center doors, the load is quickly taken on, and more evenly distributed through the car, increasing standee capacity, and the car gets through the critical downtown district in minimum time, clearing the way for other cars.

What used to take minutes now takes seconds.

WITH capacity for at least 7,500 passengers per trip, these 75 rehabilitated cars will carry 30,000 people daily, on two trips morning and night, 750,000 monthly. Figuring each double trip as a day's work somebody puts in toward the war effort, even though indirectly, it comes to 3,000,000 hours a month.

Surveys made for the southern California staggered-hour plan that went into effect in December with gas rationing led to the estimate that from 180,000 to 250,000 additional persons daily would need street car or motor-bus transportation in the metropolitan Los Angeles area, an increase of 30 to 40 per cent over loads at that time. This increase has not been realized to date because private automobile transportation has not been as greatly curtailed as was expected.

But the old yellow cars, with goat glands, are capable of carrying from 12 to 15 per cent of the increase—when, if, and as.

Wire and Wireless Communication

CHANCES of congressional action to revise the Communications Act improved somewhat with the introduction of Senate bill S 814 to separate the Federal Communications Commission into two independent divisions of three members each—one for radio broadcasting, television, and other "public communications"; the other branch would control "common carriers," including telephone, telegraph, cables, etc. The bill resembles in many respects the Holmes bill (HR 1490), introduced earlier in the lower house. It diminishes the importance of the FCC chairmanship to the status of an "executive officer" or "coördinator." It would spell out the jurisdictional authority of the commission over various controversial policy-making issues involving radio regulation such as the "newspaper ownership" problem.

The fact that the co-authors of the bill are Democratic Senator Wheeler of Montana, chairman of the powerful Senate Committee on Interstate Commerce (to which the bill was referred), and Republican Senator White of Maine (acknowledged communications expert of the U. S. Senate) would indicate that there is considerable bipartisan support behind some form of Wheeler-White-Holmes legislation.

Much depends on the outcome of the special House committee investigation of the FCC now being organized by earlier action of its chairman, Representative Cox of Georgia. Any such legislation rests under the shadow of a possible presidential veto.

* * * *

ALARMED by the diminishing stock of telephone sets resulting from the curtailment of telephone manufacturing, the telephone industry advisory committee met in Washington, D. C., on March 10th with members of the communications division of the Office of War Utilities. Leighton Peebles, director, and Francis McNamara, deputy director of the communications division, represented the OWU. The Bell system was represented by Keith McHugh, and other officials of the system. Among the independent telephone men present were Harold Bozell of General Telephone Corporation; R. A. Phillips; Lloyd Wright of Jamestown, New York; E. C. Blomeyer of the Gary Interests, Chicago, Illinois; and John Boyland, president of the Rochester (New York) Telephone Corporation.

The committee generally discussed the advisability of additional limitations under a forthcoming revision of the WPB Limitation Order L-50, so as to attain the objective of making the available stock of telephone sets stretch out as far as possible.

Among the factors discussed were: (1) limiting the "fill" of central office equipment to approximately 105 per cent of what the facilities were designed to

carry; (2) connecting all subscribers on an "interim" basis; (3) prohibiting the additional installation of PBX dial exchanges; (4) limiting drop wire spans to two along cable or wire runs; (5) allowance of additional steel wire for food-producing rural subscriber extensions in an amount perhaps as much as four times existing limitation, but no steel for city or town extensions; (6) placing cable terminals so as to eliminate copper usage in the interest of conservation; (7) the elimination of authority under PD-1A and other project applications to vary the limitations otherwise imposed under L-50. No final decisions, of course, were arrived at at this meeting, since the amendment of L-50 is within the exclusive jurisdiction of the OWU Communications Division.

* * * *

THE validity of a War Labor Board order directing the Southern Bell Telephone & Telegraph Company to disestablish a union of company employees in nine southern states was at issue last month in arguments before the United States Supreme Court.

Robert B. Watts, general counsel of the board, asserted that the organization —the Southern Association of Bell Telephone Employees—"was a revision of an admittedly company-dominated union which was never disestablished."

Marion Smith, Atlanta attorney for the company, contended that the board's order was "based upon a finding of domination and interference on the part of the company which is not supported by substantial evidence but is contradicted by undisputed evidence."

James A. Branch, Atlanta, attorney for the association, said the union had been chosen by at least 85 per cent of the eligible employees as the bargaining representative of the 20,000 or more workmen. The fifth Federal Circuit Court refused to enforce the order. The court said it had found no case "where the record is so completely lacking in any evidence of antiunion activities, and antiunion bias on the part of the employer."

Charges that the company dominated the association were filed with the board by the International Brotherhood of Electrical Workers connected with the American Federation of Labor, following a campaign to organize the company's employees at Shreveport, Louisiana. States involved in the Southern Bell Case are North Carolina, South Carolina, Florida, Georgia, Alabama, Mississippi, Louisiana, Tennessee, and Kentucky. The court's decision was expected at an early date.

* * * *

TO keep itself informed on the progress of negotiations by the merger of Western Union and Postal Telegraph, authorized by legislation signed on March 8th by President Roosevelt, the Federal Communications Commission subsequently designated a 3-man committee of its membership to follow aspects of the merger.

The committee comprises Commissioners Payne, chairman, Wakefield, and Durr. The FCC also named a staff committee, headed by William J. Norfleet, chief accountant, and including Manfred K. Toeppen, acting assistant chief engineer, for the engineering department; Benedict P. Cottone, assistant general counsel, for the law department; and Dallas Smythe, chief economist. The committee will assist the commissioners.

* * * *

PREDICTION that postwar radio will find a single instrument carrying high-fidelity broadcasting, television, and facsimile, was hazarded recently by FCC Chairman James Lawrence Fly at his news conference.

Alluding to impending developments, Mr. Fly said he believed that in the course of a "very few years" there will be only one service. Separate television, standard, FM, and facsimile services and separate receivers will all be washed out, he predicted, and there will be one thoroughgoing and efficient system. Mr. Fly stated:

I would conjecture that it would be based

upon the best of the developments we have had to date and those that we get out of war in the FM field and television, including color television. It will be a chain operation carried by radio relay. Radio relay problems are pretty well licked now. It would naturally be chain operation, because we have the programming costs—the difficulty of programming television itself in the various smaller stations.

I should not be surprised in the course of years if you will have only one receiver. You will have as a basis your highly efficient FM operation and then at appropriate hours the television programs. Every hour or so you will come down and tear off your news reports. We have been in the horse and buggy days up to now.

Alluding to the FCC's recent action in relaxing rules on FM and television applications, to permit a flying start in these fields after the war, Mr. Fly said the commission did this to "encourage FM and television as much as we can and cause the least trouble possible." He declared the commission wanted to get a demonstration of the good faith and intention of applicants to go ahead.

There were not enough applicants in these fields to cause concern, he said, and in most localities there are plenty of frequencies so there would not be the same embarrassment and difficulties encountered in the standard broadcasting field, because of the scarcity of frequencies.

* * * *

BEGINNING with the second quarter of 1943, American industry, including the wire communications industry, will be able to secure materials and manufactured products under the procedures of the Controlled Materials Plan (CMP), according to a recent announcement of Leighton H. Peebles, director of the communications division of the War Production Board.

Procedures for operating under CMP are described in CMP regulations and publications which may be obtained from WPB field offices. The general principles of the plan are outlined in the informational booklet entitled "Controlled Materials Plan," dated November 2, 1942. The "Official CMP Class B Product List" was issued December 21, 1942. CMP Regulation No. 1, as amended February 27th, or subsequently, although primarily applicable to manufacturing operations, outlines the basic procedures of applying for allotments of controlled material and of transmitting to suppliers the allotments received by the applicant. CMP Regulation No. 2 prescribes inventory restrictions, but it is expected that a directive under this regulation will be issued whereby the inventory restrictions of Orders P-130 and P-132 instead will apply to telephone and telegraph companies. Other CMP regulations cover preference ratings, transactions with warehouses and dealers, maintenance, repair, and operating supplies, and a regulation is in preparation pertaining to construction and facilities.

DURING the second quarter, suppliers may accept and fill orders for material when such orders carry preference ratings unaccompanied by such CMP allotment numbers or allotment symbols but orders accompanied by such CMP allotment numbers or allotment symbols will take precedence over other orders bearing the same rating and not accompanied by allotment numbers or symbols. After June 30, 1943, suppliers will not deliver controlled material and may in many cases refuse to fill orders for other material unless orders are accompanied by CMP allotment numbers or allotment symbols. Accordingly, it is decidedly to the advantage of telephone and telegraph companies to avail themselves of CMP procedures with respect to deliveries needed during the second quarter and essential to do so with respect to deliveries needed thereafter. This is particularly important to wire communications companies inasmuch as controlled material is defined in the November 2, 1942, booklet entitled "Controlled Materials Plan" to include all bare copper and steel wire and the copper content of all insulated wire and cable.

Preference Rating Orders P-130 and P-132 are being amended to provide a simplified CMP procedure for obtaining material required for maintenance, repair, and operating supplies including

items required for minor construction as permitted under L-50 in amounts not to exceed limits to be prescribed in these orders. In order to use CMP procedures to obtain material of any kind for construction projects or equipment other than through the procedures provided for in General Preference Rating Orders P-130 and P-132, it is necessary for communications companies to file application with the communications division (except as otherwise directed) on Form CMP-4C. Form CMP-4C must be used in addition to any applicable one of the following forms: Forms PD-200, PD-1A, PD-683, or PD-685.

* * * *

THE Bell system has some ambitious plans in regard to raising new capital after the war to bring the plant up to date and put new developments into effect. It is estimated that one and a half billion of new capital will have to be raised from the public in the first decade of peace. Financial circles believe that stock financing will be a large factor in raising the required money. In the past money was raised largely by the sale of stock at par. Six offerings were made from 1901 to 1916, and subsequently one each year in 1921, 1922, 1924, 1926, 1928, and 1930, usually at a ratio of one new share to five or six old. A large portion of such stock financing has been done since the $9 dividend rate was inaugurated in 1922.

* * * *

THE opening of a new radiotelegraph circuit between the United States and Algiers, North Africa, which will be available for the transmission of news to the United States, was announced last month by Rear Admiral Luke McNamee (retired), president of the Mackay Radio & Telegraph Company, an affiliate of the International Telephone & Telegraph Corporation.

The new circuit, the only one between this country and Algiers, will carry stories from American newspaper correspondents in North Africa which heretofore have been sent here via London. In the last weeks there has been much criticism of delays in transmission, as well as of the double censorship system resulting from the rerouting.

Announcement of the new circuit was made earlier, but the recent disclosure was to the effect that it was ready to operate. Correspondents will have preference in using it over all except the military. The circuit also will be available for Expeditionary Force Messages—the special-rate radiogram service to men in the armed forces—and for commercial and personal messages.

* * * *

ALTHOUGH telegraph messengers have discontinued the singing of personal messages for the duration, the "Happy Birthday to You" song, which was their specialty, became the subject of a copyright infringement action last month in the United States District Court.

Asking accounting of profits from the Postal Telegraph & Cable Company, the Hill Foundation, Inc., charged that the company used the song on more than 50,000 occasions since 1938, although notified that it infringed on a copyright registered more than fifty years ago. The foundation alleged in its complaint that the song, originally entitled "Good Morning to You," was written by Patty S. and Mildred J. Hill prior to 1893 and later published in a book of songs under the title "Happy Birthday to You."

The complaint alleges that the song acquired nation-wide popularity and that the telegraph company adopted the idea of transmitting, delivering, and singing birthday greetings at a fixed tariff in 1923.

* * * *

GENERAL Cable Corporation, leading independent producer of electrical wires and cables and holder of more than 200 patents, recently offered the government the right to use such patents royalty free for the duration, Dwight R. G. Palmer, president, announced. The patents cover numerous types of wire and cable vital to the war effort, Mr. Palmer said.

Financial News and Comment

By OWEN ELY

Another Test of SEC Policy on "Tenders"

THE SEC obviously does not favor open market purchases, or proposals for tenders, as methods for retiring the senior securities of utility holding companies except perhaps where such securities are selling at only a moderate discount below parity. The commission's theory is apparently that, despite the voluntary nature of the tenders or sales, some stockholders will part with their securities at prices below the current liquidating values and that this will automatically benefit the remaining holders, as well as the junior security holders. The commission feels that this works an injustice to those senior security holders who part with their securities under present conditions, in that they are sacrificing certain inherent values which belong to them.

In our opinion the commission is taking a judicial but not a practical view of the matter. Holding company securities are essentially the same as the securities of numerous investment trusts, currently traded in, most of which sell well below liquidating value. Stockholders in these trusts are quite well aware of the differential between current prices and the true liquidating value of their shares, but in many cases they are perfectly willing to make sales at current price levels, because they have other current use for their funds and do not wish to await possible realization of the full liquidating value at some future date. The "discounting" of future values has always been recognized as a legitimate function of the market-place.

It cannot be denied that some proportion of the senior securities of utility holding companies (like the securities of investment trusts) is held by speculators, some of whom purchased these issues at lower levels and are perfectly satisfied to take a current profit. The proportion of "charter members" or original holders, who bought these securities when first publicly issued, would probably be an exceedingly small percentage of the total holders. If the commission wishes to safeguard the interests of these original holders, may there not be some practical way of accomplishing this end without barring the use of the tender or open market purchase method? Perhaps it would be feasible to require security holders, in making formal tenders, to indicate the original price paid for their holdings. The tenders could then be submitted to the SEC with the idea that, if deemed desirable, those whose holdings cost more than the present market level might be barred from participation.

THE retirement of securities by open market methods is undoubtedly beneficial to the security holders, since it almost invariably results in temporarily higher market prices, and holders who have been awaiting a rise to "get out even" are thus enabled to do so.

It is true that the junior security holders, particularly the common stockholders, may *eventually* benefit by this method of retiring the senior securities. The SEC apparently proceeds on the theory that under recent Supreme Court rulings the common stockholders have no rights to so benefit. Nevertheless, as a practical matter, common stockholders—pending complete enforcement of § 11(b)(2)

—still retain one very valuable right, that of voting on the election of directors, and on the disposition of the company's assets. Thus they retain, in effect, a veto power which the commission must recognize. Obviously, they might exercise this veto power if the directors of a utility holding company decided to follow Commissioner Healy's suggestion (in the Engineers Case) and distribute a substantial amount of cash or property on a pro rata basis to senior security holders whose issues are selling well below par. (Where the securities are of high caliber and sell near par, stockholders have no objection, as a rule, to the use of cash for their requirement.)

Another SEC policy which does not always work out in practice is that not more than par should be paid for a senior security. Thus American Power & Light recently obtained SEC permission to apply $10,000,000 cash toward retirement of debenture bonds by purchase in the open market at prices between 95 and 100. The bonds have advanced to above par and at the moment it seems doubtful whether the program can be completed.

THE recent petition of Engineers Public Service for permission to acquire its own preferred stock at recently prevailing substantial market discounts was denied by the SEC. The commission held that a "fair and equitable" standard requires that some reasonable relationship exist between prices at which it is proposed to acquire stock, and the treatment which might reasonably be expected to be accorded such stock under any comprehensive plan of dissolution or recapitalization. The commission held that the "cohesion" of the preferred stockholders as a class would be destroyed and that the opposition which might be generated among stockholders, if a comprehensive plan were deemed unfair, would be dissipated. Moreover, the commission fears that any success with open market purchases or tenders might delay the formulation of comprehensive plans for dissolution.

The SEC perhaps overlooks the great advantages which might accrue, from its own viewpoint, if senior securities could be retired. It would then be a very simple matter to effect a distribution of assets among the remaining stockholders, automatically settling the problems of geographical integration and capital simplification. To refuse to permit a practical method to be placed in operation for retiring senior security holdings operates to "freeze" present difficulties in enforcing § 11. The break-up of the large utility holding company systems largely boils down to a question of the respective rights of the senior and junior security holders. The pending decision in the United Light & Power Case may help resolve these difficulties. Otherwise, the issue may have to be remanded to the courts, over a period of years, for eventual settlement. It is obvious that the present SEC machinery and policies do not provide any easy solution. It remains possible of course that the Federal courts may support the SEC in future efforts to serve as umpire in determining the respective rights of the various classes of security holders, by appointing the commission trustee in liquidation, but this remains to be seen. (See page 439.)

ELECTRIC Bond and Share has courageously made a third application to the SEC for permission to use cash for retirement of its preferred stocks at prevailing market discounts. (The first application was granted, but the second was only partially allowed.) The management evidently feels that the decision in the Engineers Case was not fully conclusive, and that their own situation differs somewhat from that of Engineers—particularly in that the cash to be used was not obtained from recent sale of assets. Possibly the move is intended to satisfy common stockholders that the management is endeavoring to protect their interests.

This problem is one of the most important issues presented to the SEC in its enforcement of § 11. It is hoped that some means can be discovered to overcome the objections which, in the minds of the commissioners, outweigh the ob-

vious advantages of retiring the senior obligations of the holding companies through open market operations.

Columbia Gas & Electric Corporation

(*Second in a series of descriptions of holding companies.*)

COLUMBIA Gas & Electric Corporation was formed in 1926 when the predecessor company merged with Ohio Fuel Corporation. Through its subsidiaries it serves natural gas to a large number of communities in Ohio, Pennsylvania, and West Virginia, and a smaller population in Kentucky, New York, Maryland, and Virginia. The electric system, which is completely interconnected, serves principally Dayton, Cincinnati, and other Ohio communities. The principal operating companies of the system are divided into the following seven groups: Charleston, Cincinnati, Columbus, Dayton, Pittsburgh, Binghamton, and Seaboard.

Almost the entire natural gas supply is obtained from the Appalachian field by production or purchase and is transported by the system's pipe-line network. Small amounts of manufactured gas are produced or purchased in certain cities. The fact that the principal supply of natural gas is obtained from West Virginia and Kentucky, and is largely transported to Ohio and Pennsylvania, results in large intercompany transactions among the system's numerous gas subsidiaries.

The installed capacity of the system's electric generating stations was increased in 1942 to 624,250 kilowatts by the completion of a 65,000-kilowatt generator in the Columbia station of Cincinnati Gas & Electric Company. The largest demand on the system's stations has been 481,720 kilowatts.

The number of wells drilled by the system's natural gas companies was slightly greater than during 1941. It is anticipated that in order to meet gas requirements for next winter, well-drilling programs will have to be materially expanded during 1943. However, the system anticipates construction expenditures of only $12,000,000 during the coming year as compared with $16,900,000 in 1942 and $24,000,000 in 1941.

At the end of the year, it was estimated that the system had available, either by leasehold or purchase contract, 2,760,000,000 MCF of natural gas in the ground, a decline of about 200,000,000 in two years, as compared with approximately 360,000,000 MCF withdrawn during the period.

Columbia Gas has, in recent years, been placing natural gas in storage in semidepleted gas fields located strategically with reference to markets. This procedure tends to lengthen the life of gas reserves and to relieve the demands placed on the transmission system during peak load periods. Approximately 30,000,000 MCF were put in storage in this manner for use during the past winter.

IN 1942 revenues were made up approximately as follows (millions of dollars):

	Electric	*Gas*	*Other Oprs.*	*Total*
Residential	12	41	..	53
Commercial	6	7	..	13
Industrial	12	24	..	36
Municipal and misc.	6	9	..	15
Unclassified	..	..	5	5
	36	81	5	122

In 1942 the balance of system income applicable to the parent company was $15,076,536, of which Columbia Gas drew down $12,048,451. Of this amount $3,581,561 was taken in as interest on subsidiary bonds. Columbia also drew $403,424 in income on other investments (principally bonds), making total revenues of $12,450,876. Expenses and taxes cut this to $10,631,654 and, after servicing its own funded debt, the company had net income of $5,208,700 as compared with preferred and preference dividend payments totaling $6,502,675.

Gross revenues increased about $2,800,000 in 1942, but this was more than

offset by an increase in Federal taxes of over $5,000,000. While some savings were made in expenses, there was a decline of about $1,667,000 in net income. The system over-all coverage of fixed charges and preferred dividends was thus reduced to 1.13 compared with 1.22 in the previous year; earnings on the first preferred stock were $8.96 per share compared with $10.66; and on the common 19 cents *versus* 33 cents.

These figures do not include the two subsidiaries (Michigan Gas Transportation Corporation and Indiana Gas Distribution Corporation) sold in February, 1942, to Panhandle Eastern Pipe Line Company. It appears from the report that if these companies had been eliminated completely from the 1941-42 figures, 1942 net operating revenues of the system, as now constituted, would compare favorably with those for 1941 (after taxes). Moreover, savings in funded debt interest (resulting from use of cash for debt retirement) were not fully reflected in the 1942 figures.

For the twelve months ended September 30th only $7.73 had been reported per share on the first preferred stock and it had been estimated that, on the basis of earlier drafts of the tax bill, the company might not fully succeed in covering the preferred dividend requirements for the calendar year. However, the report for the last quarter reflected the improved tax situation resulting from the bill finally enacted, and hence the system was able to make an improved showing for the calendar year.

January billings of the system were nearly 3 per cent larger than last year despite the fact that last year's figures included the Michigan and Indiana subsidiaries which were sold in February. Adjusting for this factor, billings would have shown a gain of about 8 per cent. By the end of the first quarter the interim figures will be on a more comparable basis.

With electric output averaging about 15 per cent over last year and gas sales 7 per cent (weather conditions have not been as favorable this year), the first quarter earnings report will register some improvement over last year, it is thought (after adjusting tax accruals in the 1942 quarter so as to give effect to its proportionate share of the year's total income tax charges).

Columbia Gas bonds are accorded a good rating by the financial services, being eligible for purchase by commercial banks; the 5s of 1952 are currently selling at 97 and the 5s of 1961 around 94. The 6 per cent preferred is currently around 55, having recovered from 40½ in January and 30½ last year; the $5 preferred sells a point or so lower. The $5 preference (second preferred) on the Curb receded to 15¼ last fall when the dividend seemed endangered but has now recovered to around 35. The common, one of the popular low-priced holding company stocks (it was the third most active issue recently), is currently around 3, having recovered from last year's low of 1 (which was the all-time low, compared with the record high of 140).

Columbia Gas faces possible separation of the electric and gas properties, under SEC interpretation of § 11. With the electric properties well integrated, their break-up appears unlikely; but with the natural gas system covering a wide territory throughout the northeastern section, it is possible that there might be some eventual split-up of gas properties. SEC policy on this question has not yet crystallized. A preliminary integration plan filed by the corporation early in 1939, which provided for relatively minor system changes, was disapproved by the SEC.

Columbia Gas faces some problems in its litigation with American Fuel & Power, Inland Gas, and Kentucky Fuel Corporation. Relations with Panhandle Eastern Pipe Line (through Columbia Oil & Gasoline) have now been pretty well ironed out, although minority stockholders of Columbia Oil are putting up a last ditch fight in the courts, and a proxy fight is in progress. Under the present plan Columbia Oil stockholders would receive $1 per share from the proposed sale of the company's interest in Panhandle Eastern Pipe Line to Phillips

Petroleum Company and Mokan for about $10,000,000.

Columbia Gas & Electric reduced its funded debt about $11,000,000 in 1942 (to $93,158,900) and reported net quick assets of about $15,500,000.

Court Upholds "Present Fair Value" for Rate Base

SOME utility executives and investors in utility securities are fearful that the Federal Power Commission's "original cost when first devoted to public service" may be adopted by the state commissions as a new rate base, which might be construed as justifying sizable future rate cuts. The present rate case of Utah Power & Light may, it is reported, prove a test case in this respect. Meanwhile, however, an important recent decision by the U. S. Circuit Court of Appeals (Fourth Circuit) in the Hope Natural Gas Case (see PUBLIC UTILITIES FORTNIGHTLY, March 18th issue, page 389) indicates that this Federal court is opposed to the so-called "prudent investment theory" of property valuation, and to historical original cost as a sole basis for valuation.

Respondents in the case were the Federal Power Commission, the Pennsylvania Public Utility Commission, and the cities of Cleveland and Akron (which in 1938 filed complaints that the rates charged by Hope to the East Ohio Gas Company were unreasonable). In May, 1942, the state commission ordered Hope (which is a subsidiary of Standard Oil of New Jersey) to reduce the rates it was charging to the two other Standard affiliates by 20 per cent. A return on investment at 6½ per cent was allowed. The principal complaint by Hope was the valuation—principally original cost, less accrued depreciation based on estimated useful life.

In its decision the court stated:

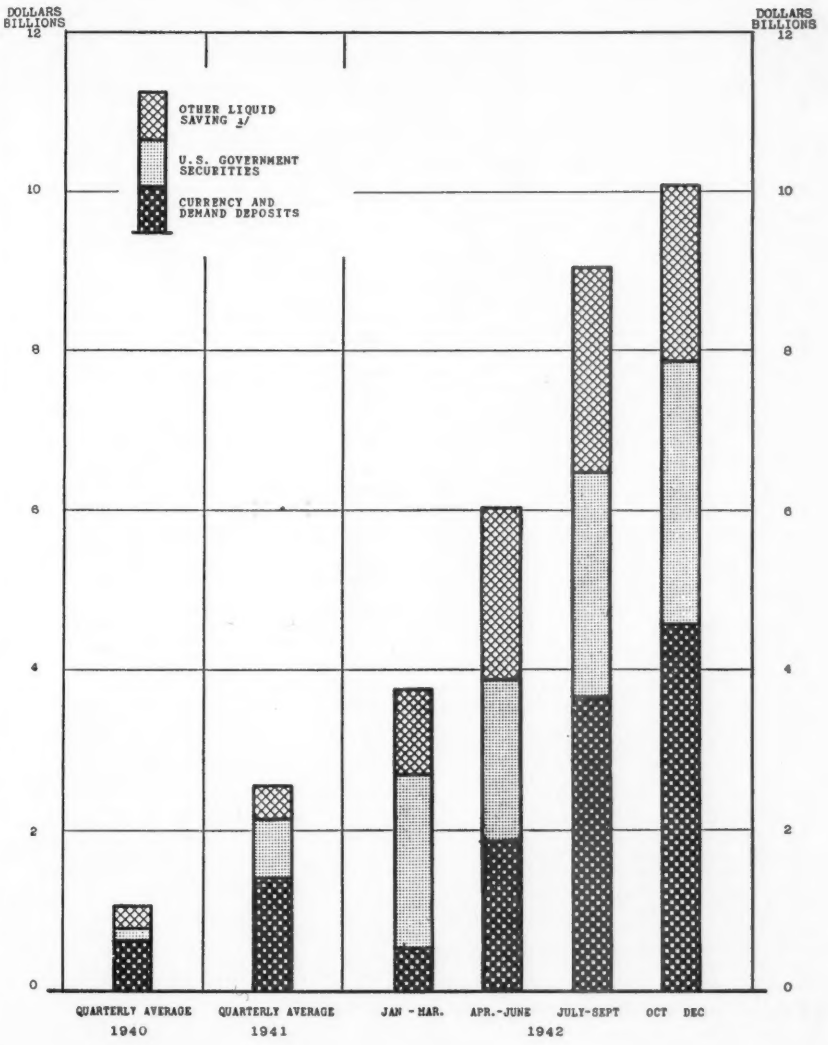
> . . . in view of the low rate of return allowed and the consequent lack of margin to take care of error in the base, the rates allowed must be condemned as unreasonable and confiscatory because of the following errors with respect to the valuation of the property constituting the base: (1) The commission did not find the present fair value of the property and took no account of the change of price levels in determining the rate base; (2) the commission ignored items of well-drilling costs and overhead, aggregating in excess of $17,000,000, which entered into the original cost of the property, basing this action on the fact that, under the system of accounting that prevailed at the time, these items had been charged on the company's books to expense; and (3) the commission ignored evidence as to the present condition of the property and computed accrued depreciation theoretically on the straight-line service-life method.

THE court admitted that the prudent investment theory is simple in operation, and avoids the practical difficulties involved in using a reproduction cost basis. However, it contended that Congress has made no statutory provision for the use of prudent investment cost, and quoted at length from Bauer & Gold's "Public Utility Valuation for Purposes of Rate Control." Judge Parker held that "there is nothing in the Natural Gas Act which justifies the thought that Congress was providing therein for the exclusive use of the prudent investment theory of property valuation."

Thus, while the court concedes that original cost is an important factor in valuation, it maintains that historic changes in the prices of labor and materials over a long period of years must be taken into account, although other pertinent factors such as the increased productivity of labor may also be considered. In arriving at "fair value," original cost or prudent investment may in some cases be a proper measure, but not where there has been a decided change in price levels, as in the present case. The court also held that the present fair value of certain wells must also be given consideration and not omitted from fair value, even though the cost had originally been charged on the company's books to expenses.

COMPONENTS OF INDIVIDUALS' LIQUID SAVING

1940—1942



[1] Includes saving in time deposits; savings and loan associations; private and government insurance; state, local, and corporate securities; and liquidation of mortgage debt and debt not elsewhere classified.

What Others Think

The National Resources Planning Board Report and the Utilities

ON March 10th President Roosevelt sent to Congress with his blessing two volumes of reports and recommendations of the National Resources Planning Board, of which Frederic A. Delano is chairman. One of these volumes deals with social security and the other with postwar development of natural resources. In the social security field the board recommended that

1. The Federal government underwrite provision of "adequate funds" by local and state governments to assure equal access to general and specialized education for all youth of college age, as well as access to elementary and high school education.

2. The government coöperate immediately with the medical profession to formulate plans enabling everyone to budget medical expenses over a reasonable period "and to contribute toward the costs of care according to his ability." The formula would at the same time "assure to medical personnel a decent livelihood commensurate with the high costs of their professional training."

3. Programs be developed for "inclusive protection" against fear of old age, want, dependency, sickness, unemployment, and accident. Among other steps, the board recommended immediate enactment of permanent and temporary disability insurance; extension of coverage of old-age and survivors' insurance, "with more adequate minimum benefits"; and reorganization of unemployment compensation laws to provide broadened coverage. This last would call for "more nearly adequate payments, benefits to dependents, payments of benefits for at least twenty-six weeks, and replacement of present Federal-state systems by a wholly Federal administrative organization and a single national fund."

PROBABLY just as specific were those recommendations contained in the second volume dealing with the transition of the nation's economy from war to peace. Under this heading the board made certain plans for the improvement of physical facilities, which, if adopted, would have an important bearing upon the future of various public utility industries. The text of the board's recommendation under this heading was as follows:

1. Preparation during the war for expanded programs of development and construction of physical facilities.

A. With private enterprise, through the Reconstruction Finance Corporation or possibly one or several Federal development corporations and subsidiaries providing for participation of both public and private investment and representation in management—particularly for urban redevelopment, housing, transport terminal reorganization, and energy development. Government should assist these joint efforts through such measures as:

(1) Government authority to clear away obsolescent plants of various kinds, as, for instance, we have done in the past through condemnation of insanitary dwellings, to remove menace to health and competition with other or better housing.

(2) Governmental authority to assemble properties for reorganization and redevelopment—perhaps along the lines of previous grants of the power of eminent domain to canal and railroad companies for the acquisition of rights of way.

B. With public agencies, through public works and work programs, as recommended in previous reports of the board and summarized in "III" of this section.

2. Plans, legislation, and organization now for:

A. Urban redevelopment: In order to facilitate city building and redevelopment, improve urban living and working conditions, and stabilize employment and investment, we recommend:

(1) That metropolitan regions and cities set objectives and make plans now, for their whole urban areas and for the human, institutional, and physical problems that will follow the war. Federal and state agencies shall provide technical assistance and grants-in-aid to promote such planning, both for the long-time building and rebuilding of urban areas.

(2) The establishment of agencies, authorities, or arrangements in metropolitan regions and cities, broad enough to deal with the problem regardless of existing arbitrary boundary lines, and with powers adequate to deal promptly and effectively with the basic

problems of urban reconstruction, including: public land assembly, ownership and control; taxation; transportation terminal coördination and redevelopment; elimination of blighted areas, whether residential, commercial, or industrial; construction of buildings and facilities to assure adequate housing and working conditions and for provision of essential urban services such as sanitation, health, welfare, education, recreation, and transit.

(3) That Federal legislation be enacted authorizing such Federal participation in such agencies, authorities, or programs as may be necessary and appropriate in particular localities to carry out the foregoing purpose of stabilizing employment and investment and of promoting the development, security, and well-being of urban communities, such as assigning to an urban subsidiary or group of metropolitan subsidiaries of a Federal development corporation powers to finance or directly acquire and develop or redevelop urban properties.

(4) Relocation and modernization of terminal facilities, air, rail, highway, and port —either these metropolitan authorities should be given appropriate powers or such powers should be included with

B. Transportation modernization. We recommend: (1) a national transportation agency should be created to coördinate all Federal development activity in transportation, absorbing existing development agencies and coöperating actively with regulatory agencies. The agency would be responsible for unifying government transportation planning, administrative, and development functions and would assume leadership in consolidation, coördination, and reconstruction of transportation facilities and services.

(2) Public responsibility for basic transport facilities for all media of transport—air, rail, water, highway, pipes, etc.—through terminal reconstruction—planning and construction of modern unified terminals as an integral part of the city plan for urban areas is a logical public responsibility for which the transportation agency should undertake active leadership;

Federal credit for the provision of new facilities and for the modernization and rehabilitation of selected old facilities such as new transcontinental transportation strips for all media, east-and-west and north-and-south, new aids to navigation and safety provisions for all modes.

(3) For each media we recommend consideration of:

Railroads—Consolidation of railroads into a limited number of regional systems by legislation, with appropriate authority granted to the transportation agency to enable such a program to be carried out vigorously. Grade and curvature revision, construction of cutoffs, and unification of important through-railroad routes, application of modern signal and dispatch devices, and revision of trackage facilities to provide adequately for efficient and low-cost postwar traffic.

Highway transport—Under the leadership of the transportation agency and on the basis of powers inherent in control of Federal development funds the task of establishing highway transport on a modern and efficient basis after the war should be undertaken at once. Major emphasis must be directed to the provision of express highways and off-street parking in urban areas.

Under the guidance of the transportation agency, distribution of Federal and state funds to municipalities should be revised to cope adequately with the urban problem.

Authority should be granted the Federal and state governments to acquire and finance adequate lands and rights of way for the account of state and local governments as well as for Federal development agencies to permit the ready undertaking of projects after the war.

Expansion of air transport—The transportation agency should plan immediately for the conversion of the aviation industry from war to peace; for the development of an expanded and integrated system of airports and airways designed for both passenger and freight services; and for a rational program for coördinating an expanded air transport system with other types of transport.

New river and harbor developments for internal and foreign trade, as required to round out existing systems and where justified by existing or prospective traffic which can thus be handled more economically than by other means of transportation.

Pipe lines—The transportation agency should, in coöperation with pipe-line companies or through a public or mixed corporation, plan and carry out an enlargement and integration of the network of major pipe lines under which the nation's essential liquid fuel supply can be assured in future emergencies.

(4) Postwar investment—The transportation industries, properly developed and coördinated, offer some of the most promising opportunities for wise investment. Planning and execution should be a function of the transportation agency and should seek to facilitate the transition from war to peace and provide America with the best that can be devised in integrated transport facilities.

With respect to development of electric energy resources, the board stated:

We recommend for consideration:

(1) Electric Power—Through public or mixed corporations with private and public funds and directors to provide interconnected systems of common carrier electric transmission lines to deliver energy to all wholesale purchasers.

Coördinated public and private develop-

ment of water power, power operation and marketing from publicly owned plants, such as Columbia river, Boulder dam, and TVA, through regional agencies.

Rural electrification—An expanded program of the type already planned by the Rural Electrification Administration.

THE board further recommended "continued Federal assistance for comprehensive multipurpose development and control of water resources." It urged that legislation be adopted "or positive executive action" taken to promote certain recommendations set forth in the board's 1941 report on national water power policy.

Regarding plans for action by Federal and state governments and regions, the board recommended:

1. That governmental planning programs be decentralized, as far as administratively practical to the states, counties, cities, and appropriate regional agencies. Only in this way can we keep our postwar planning and action programs close to the people.

A regional development. It is of utmost importance in the interest of national growth and prosperity that the development of the several regions of the United States (including Alaska and Puerto Rico) should be encouraged in every practical manner. Some specific ways and means of accomplishing this purpose have been set forth in various reports by the National Resources Planning Board, notably in the recent memoranda upon the Southeast, Northwest, and Arkansas valley regions.

In order to carry out the foregoing purpose of regional development in the national framework, the National Resources Planning Board urges that the several regions take such steps as may be necessary, in such form as may be appropriate to the particular region, and with such Federal participation as may be desirable in the particular region. Forms of regional organization, methods of financing, and types of planning will naturally vary from region to region, but it is essential that the development of each region proceed in ways conducive to the welfare of its people and consistent with the balanced advancement of the nation as a whole.

In view of the present emergency arising from the changing of a peace-time economy to a war-time basis and the necessity of reorganizing again on a peace-time basis, the National Resources Planning Board recommends that the several regional programs varying with the needs of the regions now center around the stabilization of employment and investment in the postwar period.

There was some speculation in Washington quarters as to what particular regions the board had in mind for such development. There are already before the Congress various plans for regional development in the Arkansas valley and in the so-called "seven TVA's" program sponsored by Representative Rankin of Mississippi.

REGARDING governmental relationship, the board recommended that every effort be made to coördinate the numerous centralized field services of the various agencies of the Federal government in order to render it capable of dealing most effectively with the problems of regional economy. The report fails to mark out any specific realm of action for state or local governments, except in very general terms as follows:

B. State and local. To carry out their all-important part of the national postwar readjustment program we urge that state and local governments take appropriate legislative and administrative action to increase the efficiency of local government, and to:

(1) Assist private industry in the conversion of war plants and the development of new postwar industries;

(2) readjust war-boom towns to maximum use of their new facilities, eliminating congestion and temporary structures as rapidly as possible, and guiding migration of excess population;

(3) strengthen employment services to direct demobilized soldiers and war workers to new jobs;

(4) expand education, health, and welfare services (with appropriate safeguards) to meet the problems of the postwar transition period.

(5) Establish, where they do not exist, and adequately finance planning agencies to provide plans for postwar readjustments and for the development of unused resources.

(6) Prepare carefully planned programs, engineering plans, and specifications for needed postwar public works;

(7) undertake large-scale urban redevelopment, passing necessary legislation enabling the acquisition of large blocks of land for this purpose;

(8) construct improved highway, air, and terminal facilities.

(9) Facilitate the construction of needed new housing and the elimination of slums and substandard dwellings; institute land conservation and improvement measures; and

"WE TOOK OVER A LOT OF THIS GREETING BUSINESS FROM THE TELEGRAPH INDUSTRY"

(10) Build up fiscal reserves for postwar work through increased taxation and debt liquidation during the war period.

Of interest to all utilities was that section of the report which proposed the introduction of governmental "partnership" in the form of so-called "mixed corporations" for various essential industries, including public utilities and communications.

In a section of the report on "Promotion of Free Enterprise," the board suggested a technological research program fostered by the Federal government "to promote the welfare of the nation by helping the progress of its industries, to raise the standard of living by increasing the quantity and quality of goods available for distribution, to conserve scarce and strategic resources in the nation by developing substitutes or more efficient methods, and to discover uses for available resources which have been entirely or partly neglected by private enterprise."

The board's proposal for a combination of governmental and private capital in industry on a general scale was considered a feature of the report most likely to stir debate and opposition in Congress. Concerning this problem the board said:

> . . . in some sectors of the economy, public interest may be served better by the use of mixed corporations than by either wholly private enterprise or outright government ownership and operation. A variety of ar-

rangements are possible depending mainly on the relative extent of government participation.

On the one hand the government's proportionate investment in the corporation might be so great that the corporation would be operated essentially as a public enterprise. On the other hand, private stockholders might own a majority interest and government representation be concerned solely with matters relating to public policy.

In any case the structure of a mixed corporation and the special authority delegated to government directors can be made to vary with the functions of the corporation, and with the need for promoting the public interest.

Outstanding examples of mixed corporations in Great Britain and the dominions are the South African Iron & Steel Corporation, the Imperial Airways, and the Anglo-Iranian Oil Company. In the Anglo-Iranian Oil Company, the British government owns more than half the common stock but is restricted by agreement to minor representation on the board and to matters involving foreign and defense policies.

In the postwar period, the mixed corporation might be an effective form of organization for certain plants in those industries of crucial importance in war time and in which government has made great war-time investments. In this category are aluminum, magnesium, other basic metals, synthetic rubber, some chemicals, shipbuilding, and aircraft.

Through the mixed corporation, government could participate in the selection of the areas and the business units which are to continue to operate in these industries.

Moreover, government representatives could check the degree to which public assistance to these industries in the form of contracts or special subsidies was being used to develop improved products and to reduce costs.

Other fields in which this type of joint enterprise could be used for new operating units are urban redevelopment, housing, transport terminal reorganization, air transport, communications, and electric power.

In order to equip these mixed corporations with adequate authority to carry out development programs, government might give them special rights, such as the authority to use the powers of eminent domain to acquire necessary properties.

Such a set-up might facilitate the assembly of properties for reorganization and more efficient operation. Another sphere for action for these joint efforts might be in control for the government of certain patents and properties seized from enemy aliens, and of domestic patents of basic necessity in the production of raw materials. In this latter instance the corporation might choose to operate the properties directly or license them to private operators.

It is noteworthy that the so-called "mixed corporation" is a European importation which, notwithstanding the exclusively British references contained in the National Resources Planning Board's report, reached its fullest flower in prewar Axis countries, notably Germany. In 1930 almost a fifth of all electric utility establishments in the Reich were operated by mixed corporations as against 340 operated under public ownership and 181 under private ownership. Mixed ownership was even more noticeable in the operation of waterworks and local transit systems in prewar Germany. It had a tendency to gravitate toward public ownership and in effect resulted in eventual outright state ownership and operation of the German railroad system in which originally private capital had been allowed to participate.

WPB Curtails Electric Appliances

The extent of curtailment of electric appliances by limitation orders of the War Production Board was seen in a recent WPB release summarizing the effect of such orders on a number of retail items in the consumer goods line. The electric appliances specifically set forth in this summary are electric light bulbs, electric ranges, electric refrigerators, and washing machines, electric and gas-engine powered. The effect of the limitation in the saving in each case was summarized as follows:

Electric Light Bulbs: The manufacture of incandescent, fluorescent, and electric discharge lamps, was limited on November 1, 1942, to approximately 1,700 different types of lamps. In greater part, the elimination was of

special types and the residential user's requirements have been preserved in continued production of 25, 40, 60, and 100-watt lamps. Government requirements this year will absorb more than 20 per cent of the 1941 output. Industrial requirements for 1943 will be more than 15 per cent of 1941. A substantial saving will be made of all critical materials, as: brass, 6,000 tons; copper, 320 tons; nickel, 210 tons; tin, 110 tons; chrome iron, 50 tons; and nickel alloys, 100 tons.

Electric Ranges: The manufacture of electric ranges for civilian use was discontinued on May 31, 1942. It is estimated that the limitation on civilian range production will result in an annual saving of 59,500 tons of iron and steel, 70 tons of nickel, and 20 tons of chromium. In addition to manufacturing heavy duty cooking equipment exclusively for the Army, Navy, and Maritime Commission, the industry is converted 100 per cent to war production.

Electric Refrigerators: The stop-production order on April 30, 1942, resulted in annual savings of 375,000 tons of steel, 18,000 tons of copper, 18,000 tons of aluminum, 4,300 tons of lead, 2,400 tons of zinc, 250 tons of nickel, 850 tons of tin, 460 tons of lead, 5 tons of plastics, and 4 tons of rubber.

Washing Machines, electric and gas-engine powered: The principal annual saving of materials through stopped production in June, 1942, includes 112,500 tons of iron and steel, 7,840 tons of zinc, 5,800 tons of aluminum, 4,700 tons of rubber, 1,700 tons of vitreous enamel, and 1,000 tons of copper and brass.

Will Holding Company Integration Be Made the Handmaiden of Public Ownership?

Ever since the Securities and Exchange Commission really began in a big way to make progress on its administration of § 11 of the Holding Company Act, there have been fears and hopes expressed in various quarters that the resulting divestment orders against holding company systems would mean a considerable expansion of the public ownership sphere in the electric light and power field. So far no such development has occurred in any considerable proportion.

But on the other hand it might be observed that the SEC is just getting started with the actual job of issuing integration orders in their various stages of finality. This is not to infer that the commission has not made substantial progress under § 11. Indeed, it has been said that over half of the real work of administering the so-called "death sentence" has been accomplished, and that there remain chiefly the formalities of getting out the orders and threshing out supplemental proceedings and court appeals, if any.

Be that as it may, public ownership today has claimed relatively few holding company properties put "on the block," so to speak, as the result of SEC divestment orders, issued or threatened. The city of San Antonio, Texas, is perhaps the largest single community to avail itself of that opportunity. There have been recurrent rumors that the state of South Carolina or its agent may purchase certain properties of the Associated Gas & Electric system in that state as a complement to the Santee-Cooper development. There have been similar rumors about the Puget Sound properties of Engineers Public Service and a few isolated middlewestern properties which will probably have to be sold or otherwise disposed of under forthcoming SEC divestment orders against their parent concerns.

The reasons for this reticence on the part of various communities to

pick up present or expected "bargains" are varied. It may be charged to distractions of the war emergency. It might be due to the availability of other forms of accomplishing compliance with § 11 orders, such as security exchange or localized private ownership. But the most obvious answers would seem to be in the fact that municipalities in the United States have not been in a buying mood for private utility properties since the Federal government has forsaken, temporarily at least, its policy of furnishing funds for local governments to build or purchase utility properties.

The suggestion, if not the outright accusation, has been made in cynical quarters that the SEC might even lend itself to the promotion of a public ownership revival among municipalities and other political subdivisions by writing its forthcoming divestment orders against various holding company systems with that end in mind. When we stop to think, however, that the primary purpose of the Holding Company Act was the protection of the utility investor as well as the broader "public interest," such a policy of administering § 11 would hardly be justified.

With this background, a letter written on February 27th by Commissioner Robert E. Healy, as acting chairman of the SEC, to United States Senator Edwin C. Johnson of Colorado assumes considerable significance. The Healy letter was in response to an inquiry by Senator Johnson (inspired by a Denver attorney, W. W. Grant) concerning the possibility of public acquisition of property of Public Service Company of Colorado from the Cities Service system, now undergoing SEC integration proceedings.

A bill to set up the Colorado Public Power Authority to take over Public Service was pending in the Colorado legislature. It was evidently introduced upon the assumption that the SEC would put Public Service "on the block" through an early § 11 divestment order involving Cities Service. Opposition developed over purchase price suggestions and Federal *versus* home rule possibilities. Skeptics pointed to the uncertainty of the SEC order. There was even some speculation that the Federal government, through SEC, might take over and operate such properties as a trustee. Hence, the questions placed before the SEC by Senator Johnson.

Commissioner Healy's letter began with a recital of the requirements of § 11 (b)(1) of the Holding Company Act. He recalled that proceedings under this section involving Cities Service Power & Light Company of Colorado were commenced in March, 1940, and that argument and evidence had been completed but the case not yet decided at that writing. He also pointed out that similar proceedings involving the related Cities Service Company had not yet been closed and that he (Healy) could not say when a decision would be forthcoming or whether or not appellate proceedings would ensue thereafter. Commissioner Healy's letter continued:

> Nor can I predict what the commission's decision will be, although it is clear that Cities Service and Cities Service Power & Light must, sooner or later, in one way or another, comply with the statute. With particular reference to Public Service Company of Colorado, it is impossible to say whether or not either holding company will be required to dispose of its interests therein. However, in an effort to be helpful, I will make certain alternative assumptions.
>
> First, I will assume that the decision is that Cities Service or Cities Service Power & Light may be permitted to keep Public Service of Colorado as the single integrated system or as one of the additional integrated systems which clauses (A), (B), and (C) of § 11(b)(1) of the act permit. Then, obviously, no sale or disposition of Public Service of Colorado by either Cities Service or Cities Service Power & Light will be necessary.
>
> Alternatively, I will assume that the commission's decision will go the other way and that Cities Service and/or Cities Service Power & Light are required by final order of the commission (sustained by the courts, if there is an appeal) to dispose of Public Service of Colorado. In that event, § 11(c) of the act contemplates that the respondents will have one year to comply with the order, and the commission is required to grant a second year if a showing is made that the holding companies are unable in the exercise of due diligence to comply, and if the exten-

"HELLO, ELECTRIC COMPANY? ONE OF YOUR METER READERS IS SITTING IN A TREE TEASING MY DOG!"

sion of time is necessary or appropriate in the public interest or for the protection of investors or consumers. Thereafter, the commission's means of compelling obedience is by an application to a Federal District Court under § 11(d). However, the act does not expressly state that the commission must apply to the court at the end of the second year, and there is no commission precedent deciding the problem. We have not been confronted with it as yet, but I assume that if we meet such a situation we will apply to the courts if, as, and when the circumstances and good judgment indicate that we ought to, otherwise not.

(We have not so far had occasion in any case to take the first step of applying to a court under § 11(d) for the specific purpose of enforcing compliance with an order issued under § 11(b).)

HOWEVER, in a further effort to explain the situation, Commissioner Healy followed through as to what might happen if the SEC applied to a court under § 11(d) to enforce a divestment order. Commissioner Healy said on that point:

> . . . The court can take jurisdiction and possession of the property involved, to the extent it finds necessary for the purpose of enforcing the order. It may or may not appoint a trustee to take possession for that purpose. It has the right to appoint this commission trustee but it cannot do so without this commission's consent. On the two occasions when the possibility of the commission acting as trustee was considered, the decision of the commission was that it would not accept the trusteeship if tendered. This commission has no intention or desire to operate utility properties in Colorado or anywhere else. I cannot believe there is the slightest chance that this commission will ever be trustee to take possession of Public Service of Colorado or that it will ever operate or control that company. Even if such an extremely unlikely thing came to pass, the function of the trustee, whoever he is, would be to carry out the orders of divestment and get himself and Cities Service out of the local company just as fast as possible. There is no provision in our act for the Federal government's taking or operating this property and the possibility of this commission's ever being trustee I personally regard as so theoretical and remote as to be a practical impossibility. I repeat we have no such intention or desire.
>
> Of course, if Cities Service and/or Cities Service Power & Light complied with our order within such time as we could allow them, no application to a court for the enforcement of the order or the appointment of a trustee would ever be necessary. Compliance by those companies, if an order of divestiture issues, will not necessarily take the form of a sale either of the properties or of the securities of Public Service Company of Colorado. These securities might, for example, be exchanged for securities of Cities Service or of Cities Service Power & Light, or distributed by way of dividends to owners of the holding company securities. The properties might be exchanged for other properties capable of retention under the standards of § 11(b)(1). And there are other possibilities. The pending UGI proceeding is one example of a plan not involving any sales. The Lone Star Gas and Federal Water Service cases are examples of other plans involving only minor sales.

Senator Johnson had asked that one of the SEC attorneys be assigned to study the so-called "power authority bill" pending in the Colorado legislature and pass on an analysis by the commission to the Colorado legislature. Commissioner Healy said on this:

> . . . I have some difficulty in making a truly complete reply to these suggestions at this time. We are apprehensive that it would be inappropriate for a Federal agency to comment on a bill pending before the Colorado legislature. We fear that it would be regarded as an unwarranted intrusion were we to seem to forget that whether Colorado wants public ownership and operation, and if so upon what terms and with what set-up, is Colorado's business and not ours. We doubt if it is wise for us even to seem to take a hand in such local issues. However, we have assigned an attorney to review the bill, on the off chance that some of its provisions may have a direct bearing on the Holding Company Act. In the event that there are any aspects as to which comment by a Federal agency appears appropriate, we shall write you further.

AN analysis of the foregoing statement by Commissioner Healy would seem to warrant the following conclusions: First, that the commission intends to write its pending integration orders in its own way and in its own time without regard to pending public ownership proposals or other purchase plans. Second, that the commission is not going to give advance information as to the probable outcome of such integration proceedings which, in any event, are likely to be complicated by uncertainties and delay due to appeals, court actions, and so forth. Third, that the commission has no intention of taking over the operation of utility properties as a trustee even in the event that a holding company fails to make seasonable compliance with a divestment order.

—F. X. W.

¶ "Inflation masquerades under the guise of prosperity and is at the banquet table before we know it."

—LOUIS S. HEADLEY,
Vice president, First Trust Company of the St. Paul Bank.

WHAT OTHERS THINK

"Joe Smith Goes Broke"

COST valuation, as it is being applied to public utilities by present-day government regulatory bodies, is given a polite lashing in an analogous item by T. G. M. of the *Boston Daily Globe*. T. G. M. cites the case of Joe Smith, an innkeeper whose property, when he bought it, was valued at $20,000. But once the ever-present regulatory bodies finished evaluating and investigating it, dropped in its value to a mere $9,000.

Now Joe Smith has gone broke. He had a pretty good reputation once, but now it seems he was not only foolish, but deficient in social consciousness and probably something of a rogue as well. T. G. M. says:

> A few years ago Joe bought that lovely old inn, built in 1793, which everyone who has ever been to Greentown must remember. He paid $20,000 for it and most people thought he had made a shrewd purchase. In fact, the bank appraised the property and loaned him $12,000 on a mortgage. The inn was well patronized and Joe seemed to be making a pretty good thing of his venture.
>
> Unfortunately, Joe didn't fully realize his position now that he was engaged in a business that was obviously "affected with a public interest." Specifically, he had a lot of outmoded ideas about value and what constituted fair charges to the public. In his misguided way he thought that the $20,000 he paid came somewhere near measuring the value at the time he bought. The bank seemed to think so also. In fact, both of them thought that with Joe's good management the inn could even be more valuable.

BUT at this point the "Federal Inn Commission" stepped in. The "commission" wasn't so sure about the reported value of the inn. After considerable investigation, however, it came to the conclusion that the inn's original cost, "when first devoted to the public service," back in 1793, was about $8,000, exclusive of the land. In addition, the "commission" found that some $10,000 had been spent in the 1920's putting in new heating and plumbing. T. G. M. adds:

> The FIC couldn't find any records concerning depreciation, but it figured that the former owners should have charged off depreciation even though they may not have thought of it, and that a rate of 1½ per cent a year would be fair. So on that basis the FIC quickly figured that the "original cost depreciated" of the old inn had been zero for the past eighty odd years, and that the depreciated cost of the improvements is now only about $8,000. The land they valued at $1,000, making a total value for rate-making purposes of $9,000, or $3,000 less than the mortgage.
>
> From these figures it at once became obvious not only that Joe didn't have any equity in the property, but that voting power was unequally distributed. So it demanded he write down the property as carried on his books and undertake a corporate reorganization, scaling down the debt and giving the bank a new and smaller mortgage plus 90 per cent of the common stock.
>
> The bank didn't like this scheme, but, of course, it should have known when it made the loan that "value" is not what a thing is worth today or what it could be reproduced for, but the first cost to the first user, less accrued depreciation.

T. G. M. concludes his caustic analogy by venturing the opinion that the theory of value which is now being applied to public utilities is equivalent to a squeezing out of investors who bought in good faith under standards of value long approved by the Supreme Court. It also means, he added, "eventual government ownership because there won't be any more Joes to put up capital on any such terms."

—E. M. P.

Radio and the War

RADIO is playing an increasingly important part on the war and home fronts today. Here at home it is helping to maintain a steady flow of electric power to the thousands of industries so vital to the nation's war effort. All over the country the radio is being applied to the electric power industry by a system of control whereby electric trouble is located automatically and prevented

from spreading and shutting off power.

Users of this new system report that the radio sets used by the electric industry can in no way be compared with the sets on the market for home use. According to Public Service of New Jersey,

> The set is connected to a high-voltage substation bus and with its associated equipment is as tall as an ordinary 2-story house. The set has no antenna, in the usual sense, but is connected to the high-voltage transmission lines by means of special devices. The radio waves are not broadcast into the air in all directions in the usual manner, but are guided or "carried" by the high-voltage conductor to which the set is connected. Hence the term "carrier current" is applied to this particular application of radio. Usually all of this equipment is located out of doors, and is housed in weatherproof containers made of porcelain and steel.

The manner in which these carrier current radio sets operate to maintain electric service is comparatively simple. One set is located at each terminal of a high-voltage transmission circuit, similar to those seen on the countryside. When short circuits occur, as a result of sleet formation on the bare conductors of electric power or lightning, every "carrier current" radio set is thrown into operation, thereby avoiding a complete breakdown of the electric system. The sets closest to the trouble recognize this fact and permit the protective relays to operate and trip the circuit breakers. This disconnects the short-circuited line and allows power to pass freely over the rest of the system. All radio sets on other lines, at the same time, prevent the other circuit breakers from being opened.

It is reported that the entire protective system operates at high speed. The short circuit is located by the "carrier current" radio set within one-sixtieth of a second, and the entire trouble cleared from the power system, automatically, in less than one-fifth of a second.

The Father of Telegraphy

Author Carlton Mabee in a recently published volume entitled "The American Leonardo" presents a scholarly biography of Samuel F. B. Morse—inventor and artist. The Morse who steps out of the pages of Mabee's book turns out to be something less than Prime's perfect hero (Samuel I. Prime was a close friend and original biographer of Morse) and something finer than the grasping monopolist that Horace Greeley accused him of being, or the snob and charlatan that his defeated rivals in telegraphy pictured.

Mr. Mabee colors nothing. He presents the real Morse, the narrow Calvinist who hated Unitarians, the chauvinist, the pamphleteer and journalist, the promoter, and the businessman.

Morse, Mabee records, was first of all an artist. The recognized leader of American artists, he was the founder and long the president of the National Academy of Design. There was scarcely a distinguished person in London, Paris, or New York whom he had not met or painted.

In his youth, Morse invented a force pump with his brother, toyed with the idea of propelling vessels by the reaction of a jet of water, and thought of developing a machine for copying statues in marble. Later, through his persistency, his self-assurance, and his astuteness in drawing Professor Leonard D. Gale and Alfred Vail, his associates, Morse became a pioneer in electrical communication.

The American Leonardo. By Carlton Mabee, with an introduction by Allan Nevins. Alfred A. Knopf, New York, N. Y. 1942. Pp. 420. Price $5.

The March of Events

Court Clears Company

STATE Supreme Court Justice Carroll G. Walter last month granted permission to minority stockholders of the North American Company to discontinue a suit for recovery of several thousand dollars allegedly lost by the company through payments made as political contributions in St. Louis several years ago by a subsidiary, the Union Electric Company of Missouri. The discontinuance of the action came on the eve of a scheduled trial and after preparation of the case.

Justice Walter ruled that in the circumstances the discontinuance constituted a successful defense of the action by the directors and officers of North American, against whom it was brought. He granted, therefore, a motion by the individual defendants to assess the costs of their defense on the North American Company under the recent state law for recovery by directors of the costs of the successful defense of a stockholders' suit. The suit was brought in the name of Jeannette H. Levy and others.

Douglas Dam Dedicated

PRESIDENT Roosevelt from the White House recently dedicated Douglas dam — the eleventh hydroelectric project TVA has completed within a decade—to the winning of the war. The saga of this power dam's record construction was unfolded during ceremonies that interrupted final stages of work by several thousand men and women only an hour.

Even as the President's letter which contained the words "Let our enemies take note. Douglas dam shows what a democracy can do" was being read over loudspeakers, the droning sounds of giant bull-dozers and steam shovels could be heard below the east Tennessee dam's giant spillways. Vital construction work continued apace.

Actuality of Douglas' place among other TVA dams now producing electric energy for war plants occurred when a workman pulled a switch starting the dam's generating unit.

ODT Bans Free Bus Service

PRIVATELY owned busses have been brought under the same prohibitions against non-essential service already in effect for vehicles operated in charter service by transportation companies, the Office of Defense Transportation announced recently. Effective March 15th, the order abolished all so-called "free" service, even where the bus is owned and operated by a private organization for the convenience of its own members or other restricted groups.

The order prohibits such services by privately owned busses as:

Special transportation to race tracks, golf clubs, beach clubs, riding academies, night clubs, and roadhouses.

Exclusive service provided for attendants and guests by apartment buildings and hotels.

Special transportation for athletic teams, not only in school busses, but in vehicles owned by organizations, such as baseball clubs.

Special service to picnics, fairs, or other amusement centers.

Special service for use of the general public, to stores or shopping centers.

Special transportation for entertainment groups, such as orchestras on tour.

The order provided, however, that ODT may issue special permits for limited operation to some privately owned busses to meet specific needs of exceptional circumstances.

ODT Director Joseph B. Eastman estimated the ban on special service in private busses would release several thousand vehicles for the transportation of war workers.

Dimout of Signs Studied

PLANS for a modified national dimout to save fuel and transportation recently were reported under study by the Office of Civilian Supply and the War Production Board. While no official statement was issued on the subject, it was not denied that the WPB agency was taking the position that it was inconsistent to burden transportation and fuel output by permitting the free use of electricity to advertise commodities which are rationed. Members of this agency also were understood to argue that it is a waste of electrical energy to permit unrestricted use of electricity to advertise supplies which are inadequate and which are likely to be scarce for the duration.

The OCS was said to have prepared a program under which it contends that 2,000,000,000 kilowatt hours of electricity would be saved yearly and about 1,000,000 kilowatt hours in evening peak loads. Under its program the agency said that coal or equivalent savings would exceed 1,000,000 tons a year and about 500,000,000 ton-miles of freight would be saved annually.

Alabama

Conflict within Commission

GORDON Persons, member of the state public service commission, charged Commission President Hugh White with favoritism in a utility rate investigation pending before the commission.

White denied the accusation and declared he was merely "attempting to discharge his duty with fairness to utilities and to the public" and that Persons' criticism of him was "absurd."

At the close of a 2-day hearing on the Birmingham Electric Company's rate, White moved for a continuance of the hearing to be held in Birmingham April 15th so the mayor, postmaster, probate judge, and other public officials could be notified to attend.

Persons opened the hearing, slated to consider rates of the Alabama Power Company, with a statement charging White with "trying to make it appear that Associate Commissioner Harrison and I want to hold these hearings in secret."

FPC Order Modified

RULING that the Federal Power Commission has the power to have its accounts kept as it prescribes, the United States Fifth Circuit Court of Appeals modified and affirmed an order of the commission fixing the original cost of the Alabama Power Company's Martin dam project.

Cost was set at the original figure for the Tallapoosa river project, of $15,209,611, as of December 31, 1929. The company claimed cost to be approximately $17,500,000.

Among items disallowed by the commission, but granted by the court, were $70,000 paid by the company for the maintenance of a bridge over Kowaliga creek, and certain taxes, expenses, and bonuses to employees of the Dixie Construction Company, formerly owned by Alabama Power Company. "We do not adjudge that all that has been ordered charged off is forever lost to Alabama Power Company," the court declared.

In the decision handed down on March 11th, the appellate court directed the FPC to add to the cost of the project certain items which the court held to have been wrongly excluded.

The Martin dam project was built under a license issued by the commission June 6, 1923, to the Alabama Interstate Power Company and transferred by the commission to the Alabama Power Company June 22, 1923.

Arizona

Rate Probe Demanded

THE state senate, by resolution unanimously adopted, has called on the state corporation commission to assert its jurisdiction and make its first investigation of the power rates charged by the Salt River Valley Water Users Association.

The resolution is without effect as law, but merely is an expression of the senators.

It was introduced by Senators L. E. Canfil of Pinal county and James Minotto of Maricopa county "to settle once and for all whether the rates charged farmers in the Casa Grande valley are excessive." Canfil charged in the senate debate recently that they were twice as high as they should be, and Minotto agreed that Pinal county has a grievance.

Senate Adopts Water Bill

THE revised water and power authority bill passed the state senate, 13 to 5, recently and was sent to the house, where a duplicate measure already was on the committee of the whole calendar. It was a substitute for the governor's bill and was adopted after a long and bitter fight.

Although it agrees with the governor's bill in many respects, it would limit the power of the agency created to such activities as planning, investigating, and contracting for power and water, and would greatly reduce the amount of money to be made available for the agency's use.

Authority proposed in the governor's bill to build power lines and canals, put the state in the power business, issue revenue bonds, and impound the $300,000 which Arizona receives annually from Boulder dam power, is denied under the revised act.

Principal duties of the agency as defined in the bill are to plan "for the use of and for control and supervision of the water and power which the authority may acquire by contract for the state from the Federal government from the main stream of, and from the power-producing works on, the Colorado river."

The bill appropriated $15,000 for use of the agency for the remainder of the current fiscal year, $50,000 a year for the next biennium, and $12,500 annually for the biennium, to be matched by Federal funds for water and power surveys.

It would abolish the Arizona Colorado River Commission to avoid duplication of authority.

Proponents of the governor's bill complained that the substitute provided only for planning, while advocates of the revised bill agreed that planning was all that could be accomplished at the present time.

Arkansas

Bond Measure Endorsed

THE state senate corporation committee, by a vote of 5 to 0, early last month recommended for passage a bill which would permit Arkansas municipalities of the first- and second-class to issue revenue bonds and purchase privately owned electric light plants operating in their limits.

The bill (SB 366), introduced by Senator W. L. Ward, Marianna, was similar to one by Representative Alene Word, Mississippi county, which had previously been defeated.

Vote was taken by secret ballot in executive session, with one committee member not voting.

The measure differed from the Word bill in that it specified that the light plants should be purchased at terms agreeable to the utility company.

The bill would permit a municipal plant to extend service to rural sections of the county.

C. Hamilton Moses, president of the Arkansas Power & Light Company, opposed the measure in an hour-long talk in which he charged that bonding companies would profit by the bill through selling the revenue bonds at reduced rates of interest. "On its face, the bill sounds good," Mr. Moses declared. "But it would be a mistaken move in Arkansas."

Mr. Moses, closely questioned by committee members on shares of AP&L stock held by out-of-state holding companies, asserted that Arkansans own "more than half" of the preferred stock, though common stock is owned "by thousands of people throughout the United States."

T. J. Raney, Little Rock investment broker, spoke in behalf of the bill. He contended that the majority of AP&L's "voting stock" is owned outside the state.

Colorado

Power Bill "May Drag"

GOVERNOR Vivian at a recent press conference stated that the bill before the state legislature to create a state power authority "may drag on until the next session of the legislature." (See also page 439.)

Asked if he would approve a special session to consider the bill were the recommendation made by a proposed interim committee, Vivian said, "It is a little too early to consider such eventuality at this time. Indications are that the case now before the Securities and Exchange Commission will not be decided until about June, and the company will have a year in which to divest itself of its subsidiary company."

Vivian had reference to hearings before the SEC relating to the "death sentence" clause of the Public Utility Act which, it was expected, would require Cities Service Company to divorce itself from its subsidiary company, the Public Service Company of Colorado.

Asserting they desired to study further the controversial power authority proposal, Denver city councilmen balked at a recent meeting on taking action on a resolution opposing enactment of the bill in its present form. President Marranzino, in explaining why the resolution was not called up, although it had been filed the week previous after having been signed by seven councilmen, said it had been decided at an informal conference there was no need to act until councilmen had familiarized themselves with all provisions of the bill.

Among other things, the resolution awaiting action by the council called attention to "grave constitutional questions as to the validity of the bill" and stated the bill "attempts to take away from home rule cities certain powers granted them by Article XX of the Colorado Constitution."

Connecticut

Utility Bills Reported

BILLS making provision as follows were unfavorably reported in the state legislature recently by the judiciary committee and tabled for the calendar:

SB 6, making the state public utilities commissioners elective officers.

SB 113, requiring the public utilities commission to mail notices of all hearings on rate increases to all property owners in area affected.

SB 706, requiring the commission to establish rates based on fair rate of return to investors on capital prudently invested.

SB 708, empowering the commission to make summary investigations of rates and service.

SB 718, providing for the holding of commission hearings in the town whose residents the hearing affects.

A favorable report was made on SB 723, providing rates and service of publicly owned utilities outside the limits of the towns owning them shall be subject to the commission.

Indiana

Court Upholds Ruling

JUDGE Earl R. Cox, of Marion County Circuit Court, recently upheld the state public service commission in its ruling which denies the Illinois Central Railroad the right to discontinue two passenger trains daily between Indianapolis and Effingham, Illinois.

Attorneys for the railroad said they would appeal to the state supreme court. Judge Cox said that if there is a conflict between the commission's ruling and an order by the Office of Defense Transportation, the question should be taken to Federal court to decide whether the Federal government supersedes the state government.

ODT had authorized the railroad to discontinue the trains, which serve Bloomington, Bloomfield, Linton, and other communities, but the authorization apparently has not been made official. Judge Cox held his court does not have authority to upset the finding of any commission or board, so long as the ruling is made on material evidence.

Iowa

Pipe-line Case Upheld

THE state supreme court last month upheld the right of gas pipe-line companies to condemn land for the construction of pipe lines in cases where the owners of such land refuse to sell.

The court's opinion also upheld the constitutionality of the Iowa property condemnation law which had been challenged by five Mahaska county plaintiffs. The five plaintiffs had sought an injunction to restrain the Natural Gas Pipeline Company of America from constructing a line across their land.

Judge Frank Bechly, before whom the case originally was tried in district court, denied the application for injunction and upheld the constitutionality of the property condemnation law.

The supreme court decision said the trial judge had decided the case properly and therefore affirmed his decision.

Kentucky

Utility Seeks Rate Increase

ARGUING that return of 1.3 per cent is unfair and inadequate, Wilbur K. Miller, Owensboro attorney representing the Western Kentucky Gas Company, last month urged the state public service commission to grant the utility a system-wide rate increase of 7.6 per cent in 26 west Kentucky towns and villages.

The commission took the case under advisement after Judge Thomas J. Sparks, Greenville, and J. W. Powell, Madisonville, opposed the increase on behalf of their towns. Other principal towns affected are Princeton, Franklin, Munfordville, Cloverport, Hawesville, Sebree, and Auburn.

Miller said increased Federal taxes are not at issue in his fight for higher rates, as all calculations submitted to the commission were based on 1941 income tax rates.

The rate raise sought would, on the basis of 1941 business, add $18,522 to net operating revenue to provide a return of 6½ per cent, Miller declared.

Michigan

City Gets Aid on Bill

A TREASURY Department ruling that excess profit taxes on public utilities should not be passed on to consumers was reported recently to the state house committee on public utilities by James H. Lee, assistant Detroit corporation counsel, and Richard A. Sullivan, Detroit public utility consultant.

"This important ruling reinforces our request for enactment of the Nagel-Kronk bill, which would permit the state to adjust utility rates downward so that excess profit taxes need not be paid," Lee said.

At a hearing before the house committee, Lee and Sullivan suggested that the rate readjustment be given all customers of a utility. The Nagel-Kronk bill, as introduced at the request of the city, proposed to limit the adjustments to farm and residential users. Lee said the proposed change would avert charges of class legislation.

The bill is an aftermath of the city's controversy with the Detroit Edison Company

over $8,000,000 in so-called excess profits last year.

The city asked the Michigan Public Service Commission to adjust rates at the time, but the commission ruled that it had authority only over future rates. The Nagel-Kronk measure is intended to grant the additional authority.

Missouri

State Fare Survey

An investigation of the fares and operating practices of the St. Louis Public Service Company by the state public service commission, on its own initiative, as a means of ending the controversy over the company's proposal to file a new fare schedule and abandon sale of weekly passes for its street car and bus lines, was announced at Jefferson City last month by Chairman Frederick Stueck.

A formal order for the inquiry, directing the commission engineering, accounting, and transportation rate experts to begin immediately studies of the company fares and operations, would be issued, Chairman Stueck said.

Stueck said Sam W. Greenland, general manager of the St. Louis Public Service Company, assured the commission that the company would make no further move toward filing with the commission its proposed new schedule, including abandonment of sale of passes, pending completion of the commission inquiry.

The commission investigation does not contemplate a valuation of the Public Service Company property for rate-making purposes, Stueck said.

Nebraska

Power District Convention

"Social and Economic Value of Rural Electrification" was the keynote of the eighth annual convention of the Nebraska Association of Rural Power Districts which was held at Lincoln last month. Paul Marvin, secretary, said approximately eighty were in attendance.

All but three of the 21 districts operating were represented. Harry G. Johnson, Oakland, president, presided at the all-day session. Reports from the districts showed 16,000 consumers, with a steady growth and extension during the past year.

Chester Lake, St. Louis, special assistant to the administrator of the REA, gave a general résumé of the work accomplished. Nebraska, he said, is one of the leading states for public power districts and stands almost in the same category as Tennessee. Over 5,000,000 persons can now turn a switch and get electric current, not possible before the REA was organized, he stated.

Mr. Lake referred to George W. Norris as "Daddy of all public power for the people of the United States," and praised his efforts in behalf of the farmers. He referred to himself as the "trouble shooter" for the REA, but said that, with the increased power and popularity of the REA, his "troubles were decreasing."

Jack Beeler, Glen Elder, Kansas, director of the National Rural Electric Coöperative Association, talked on "National Association and Its Future Plans."

"This association is the leadership for all electrical coöperative organizations," he said. "Nebraska is a 100 per cent member, as all power districts in this state have joined the national." He gave a general outline of what is to be accomplished from the releasing of materials for line extension. He pointed out what is hoped to be accomplished in the insurance program for coöperative power and public utilities. A company has been organized but as yet is not operating. "Forty-five states are members of the NRE Coöperative Association," he concluded.

LB 204, which would permit formation of a district in Omaha, similar to the Metropolitan Utilities District, which would be empowered to take over the Nebraska Power Company, was branded "undemocratic, monopolistic, and contrary to honest public ownership" in a resolution passed on March 10th by the Nebraska association.

In its resolution the group asked that the measure be killed.

The association adopted another resolution in which it pledged its support of a bill introduced in the House of Representatives by Representative John Rankin, which would amend the Rural Electrification Act to provide for loans for the construction of rural electric lines, reduction in rate of interest, and lengthening on time of maturity of loans under such an act.

W. R. Herman of Pilger was elected president of the association, M. A. Steinauer vice president, Paul Marvin of Lincoln secretary, and Henry Sieck of Lincoln treasurer.

Utility Fund Disbursements

Two amendments to the city charter will be put before Lincoln voters at the election

April 6th, it was proposed at a recent meeting of the city council.

The first would amend § 12, which relates to disposition of revenues from public utilities and provides that any surplus not used to improve the facility be put into a sinking fund. The amendment would provide that 5 per cent of the total gross sale of electric current be collected in lieu of tax and distributed among the state, county, city, school districts, and drainage district.

The second would be § 3-D in Article IX and would provide for investment of certain funds now lying idle.

New Jersey

Transit Collapse Feared

NEW Jersey's public bus transportation system faces imminent collapse because of the deterioration of equipment and the shortage of man power, unless "immediate steps" are taken by the Federal government to alleviate the condition, Joseph E. Conlon, president of the state public utility commissioners and coördinator of transportation under the state's defense set-up, warned recently.

In a letter to Paul V. McNutt, director of the War Manpower Commission, and other high Federal officials, Mr. Conlon said his warning was based on a survey of bus equipment and man power of the New Jersey bus companies, involving 408 operators. He sent details of the survey to Mr. McNutt and the heads of ten Federal agencies having jurisdiction over labor, transportation, and the country's war effort.

Mr. Conlon wrote that from a long-range viewpoint "it can be predicted, without undue pessimism, that unless immediate steps are taken to alleviate the bus equipment and manpower shortage, conditions will become far worse in the next six months and as a result the war effort in this territory will undoubtedly be seriously impeded."

Unless new replacements of busses are made soon, especially in the older type of vehicles now being used, there will be a dangerous diminution in the quantity and quality of surface transportation, Mr. Conlon is reported to have predicted.

A spokesman for Public Service Coördinated Transport said that while "collapse" was "too big a word" to describe what might happen to bus transportation in New Jersey "if sufficient spare parts are not made available to keep present stock on the road, a major breakdown may occur."

New York

Quits City Transit Body

THE New York city board of transportation announced recently the resignation, effective March 15th, of W. Francis FitzGerald, chairman of its impartial grievance committee since it was established about a year ago. He will enter the banking field.

Mr. FitzGerald's letter of resignation, as made public by the board, assigned no reason for his action.

The other members of the grievance committee will continue to function. They are Andrew R. Armstrong, former councilman, and Nathan Frankel, former labor secretary to Mayor LaGuardia.

In transit and labor circles Mr. FitzGerald's resignation was seen as a prelude to substantial changes in the administration of the affairs of the board, so far as operation of the city's unified transit system was concerned. The grievance committee in its year of existence handled 900 cases. It recently sent to the mayor and the board a report in which the labor policies and alleged dilatory tactics of the board were criticized frankly.

Ohio

Appeal Planned

DECISION of former Common Pleas Judge Robert P. Duncan, which quashed indictments charging eleven present and former officials of the Ohio Fuel Gas Company and its associated firms with presenting false bills and obtaining money under false pretenses, will be appealed to the district appellate court.

In dismissing the charges, Judge Duncan held that the officials were charged, not as principals, but as aiders and abettors, and since no crime had been committed by the Ohio Fuel Gas Company as principal, there could be no crime by the aiders and abettors.

Prosecutor Ralph J. Bartlett said he would appeal the decision on grounds that if the company could not be charged as a principal, its officials would become principals instead of aiders and abettors.

Oregon

Hearing Takes Recess

ON the twentieth day and just short of three thousand pages on the transcript, the SEC hearing into the Portland General Electric Company was recessed March 9th to be "continued at the call of the commission." Date when the hearing would resume was not definitely set, but was unofficially agreed to be around mid-May. Remaining to go into the already voluminous record were several witnesses from Bonneville, plus the rest of Bonneville Administrator Paul J. Raver's cross-examination.

As an aftermath to the hearing, charges that the Bonneville Administrator sought to require sale of privately owned utility properties to the government as a condition for signing a long-term contract with the Portland General Electric Company were contained in a suit brought in Federal court on March 10th at Portland.

The suit asked clarification of the powers of Paul J. Raver, Bonneville dam power administrator. It was charged that Raver refused to sell Bonneville power under a long-term contract unless the Portland Company agreed to sell to Bonneville its properties in Vancouver, Washington, and Woodburn, Oregon. It was said to be the first known suit testing the rights of a Federal power administrator.

The plaintiffs, independent trustees of the Portland concern, brought the action. They claimed that the company is not required by law to sell either of the two properties, but that a bludgeon process is being attempted to bring about public ownership. The complaint asserted that the Portland Company's properties decreased in value because of the denial of any deal except a day-to-day contract.

Taxing Power Asked

THE utilities committee of the state house recently asked the legislature to require the state's 11 municipally owned electric systems to pay 3 per cent of their revenues to the general funds of their cities.

The same committee introduced a memorial asking Congress to require payment of a portion of gross revenues in lieu of taxes by the Bonneville Power Administration to Oregon and Washington.

Another substitute bill by the utilities committee would require rural electrification districts to pay a tax of 2 per cent of their gross earnings. REA property already is taxed.

Pennsylvania

Rate Increase Threatened

A NEW increase in the rates charged by the Philadelphia Gas Works Company was threatened recently unless Philadelphia is granted special concessions on oil used in the manufacture of gas.

The Philadelphia Gas Commission, which fixes rates under the terms of the lease on the city-owned gas plant, announced that recent orders of the Office of Price Administration and the Petroleum Administration for War would increase operating costs by $456,315 a year, and added: "It is difficult to see how the added cost of oil can be absorbed without advancing the Philadelphia gas rates."

Hudson W. Reed, president of the Gas Works Company, who attended the commission's meeting, estimated the added cost would mean an increase of about two cents per thousand cubic feet of gas.

Governor Drops Nomination

DR. Frank Parker, University of Pennsylvania professor, will not be a nominee for a 10-year term on the state public utility commission at $10,000 a year. Governor Edward Martin recently withdrew the Parker nomination from the state senate. The governor was reported to have acted at the request of Dr. Parker.

State Senator M. Harvey Taylor, Republican of Harrisburg, who also is Republican state chairman, meantime introduced a bill in the senate to make certain that Richard J. Beamish, Democratic member of the state commission, does not stay in office after his term expires April 1st. Mr. Beamish's commission now reads that he holds office until April 1st "and until his successor is appointed and qualified." The senate has O.K.'d the bill.

The Taylor bill would strike out part of the Public Utility Law to confine Mr. Beamish's term to its stated period. It was introduced because of fears of a legal challenge of any recess appointment if the senate adjourns without filling the place.

Face Inquiry

INVESTIGATION of the formation of certain municipal water authorities, and of charges that a utility syndicate systematically is selling private water companies to newly formed authorities, has been approved by the state senate.

The senate last month approved a resolution by Senator John H. Dent, Democrat of Jeannette, calling for a 6-member investigating

committee to report this legislative session.

The senate municipal government committee, meanwhile, was considering a bill introduced by Senator George Woodward, Republican of Philadelphia, to place municipal authorities under regulation of the state public utility commission.

A measure to create some method of assessing value of water companies sold to such authorities likely would be introduced.

Another authority bill, introduced in the house last month by Representative David N. Denman, Republican of Latrobe, would require a referendum of voters of each municipality affected before a municipal authority could purchase any properties. His bill also would place the authorities under commission regulation.

South Carolina

Utilities Bill Introduced

A BILL permitting the South Carolina Public Service Authority to purchase local utilities was dropped in the state senate hopper early last month and simultaneously General Manager R. M. Cooper issued a statement concerning the measure.

Co-authors of the Santee-Cooper bill were Senators Leppard of Chesterfield, Berry of Richland, Jefferies of Colleton, Dinkins of Clarendon, Dennis of Berkeley, Mars of Abbeville, Parler of Dorchester, and Brown of Barnwell.

Referring to the bill, Mr. Cooper in his statement said that it was less controversial than the one introduced in the closing days of last year's session at which time a free conference report on a bill that granted permission to purchase the properties of the South Carolina Electric & Gas Company and the Lexington Water Power Company failed to reach the state assembly in time for final action.

Mr. Cooper said that "some opposition developed at the last session among the friends of the Lyles-Ford project because they thought that the then proposed amendments gave Santee-Cooper the right to extend into their territory, but the present measure definitely limits Santee-Cooper to the purchase of the local properties."

He explained that the bill was "designed to benefit the people."

This bill differs from previous proposals in that it limits the purchase of existing utilities by the authority specifically to the properties of the South Carolina Electric & Gas Company and Lexington Water Power Company, and requires that the authority make payments in lieu of property tax to counties, cities, and school districts before other payments are made. These payments would constitute a "first lien."

The measure also gives municipalities served by the utilities the right to repurchase the distribution system in the respective municipalities from the Santee-Cooper authority.

Describing Santee-Cooper's proposed expansion program as designed to benefit South Carolina electric consumers, James H. Hammond, of Columbia, chairman of the South Carolina Public Service Authority, has served notice that he would not sign any contract to sell distribution systems or power to municipalities unless he was convinced that local rates would be reduced.

The chairman, who succeeded Tom B. Pearce several months ago, made this statement while testifying before the state senate finance committee at a hearing in Columbia last month on the Santee-Cooper bill that would give the authority the right to buy the properties of the South Carolina Electric & Gas Company and the Lexington Water Power Company for $39,700,000.

Opposition leaders to the Santee-Cooper purchase proposal were Senator J. M. Lyles, of Fairfield, and Eugene S. Blease, of Newberry, former chief justice, state supreme court.

Leading the proponents of the measure was Senator R. M. Jefferies. Speaking in the interest of the bill were Mr. Hammond, Mayor Pro Tem Gary Paschal, of the city of Columbia; City Attorney Paul A. Cooper, of Columbia; N. A. Turner, special attorney representing the city; Mayor W. H. Price, of West Columbia; Senator J. E. Leppard, of Chester, who represented the rural electric coöperatives and various other coöperatives' representatives.

Tennessee

Get Gas Line Permit

THE Kentucky-Tennessee Natural Gas Corporation was recently granted a certificate of convenience and necessity by the state railroad and public utilities commission to lay pipe lines to serve east Tennessee, state Utilities Commissioner Porter Dunlap has reported.

Whether such lines will be put down or not, however, will depend on the decision of the War Production Board conference on the allocation of pipe-line materials to the corporation, C. M. Coleman, representative of the gas company, said, and also on the decision of the

Federal Power Commission in which the case now is pending.

The objective of the corporation, Commissioner Dunlap said, is to construct facilities of Knox county, Kentucky, to Knox and Blount counties in Tennessee for serving Aluminum Company of America located in Alcoa.

Utility Commissioner Named

JOHN C. Hammer, former McMinnville attorney, was appointed by Governor Cooper early last month to membership on the state railroad and utilities commission, to serve during the absence of Commissioner William D. Hudson, recently commissioned a major in the United States Army.

Hammer stepped up from his post as supervisor of the commission's motor carrier division, a position he has held since 1939. He is a former member of the state legislature, serving in the lower house of the 1937 general assembly as Warren county representative.

As commissioner, Hammer will receive a salary of $5,000 a year.

Texas

Offers to Buy Output

PURCHASE of the entire electrical energy output of Denison dam for the duration of the war by the Texas Power & Light Company was proposed recently by John W. Carpenter its president.

Carpenter's proposal was the first offer to purchase the electricity to be generated by the dam. Speaker Sam Rayburn of Bonham is preparing a Red River Valley Authority Act to administrate distribution of power and Carpenter's plan must await action by the RRVA. His proposal was made public through letters received by Texas Power & Light preferred stockholders. The growing need for power for war industries in that area motivated the offer.

Edward T. Keck, vice president in charge of engineering and power, said the company had made a thorough study of the facilities that would be required to connect the system of the company with the Denison plant, and said it was prepared to begin construction of the only 18 miles of new lines required.

Washington

Gives Utility Values

AS the suit of the Snohomish County Public Utilities District to acquire through condemnation the distribution properties of the Puget Sound Power & Light Company in that county early last month entered its fifth week in United States District Judge John C. Bowen's court, the power company started the introduction of testimony as to the place the system has in reference to all the other properties of the corporation.

J. A. Farrell of Ann Arbor, Michigan, engineer and depreciation expert who spent a year in making his survey in Snohomish county, was on the stand.

The jury will have to decide the question of what is a fair market value of the properties sought, and the damages imposed upon the remainder of the company's properties by the removal of this segment of the entire system.

Sam F. McFadden, executive vice president of the company, testified that remaining property of the Puget Sound Power & Light Company would be damaged to the extent of $4,500,000, if the Snohomish county branch was lopped off. If the property was taken over by the public utility district, it would be lost even as a wholesale market for the 30,000 kilowatts now sold there, McFadden said.

Introduction of testimony came to an end on March 11th with the completion of a cross-examination of Reno Odlin, Tacoma banker and former director of the utility company. Attorneys for the PUD announced there would be no rebuttal. United States Judge Bowen excused the jury until March 15th at which time closing arguments were to be made.

No Free Service

THE Seattle city council's utilities committee recently discontinued free water and light service to the Georgetown Hut for soldiers, holding the War Chest should pay for the utilities.

The "hut" is the old Georgetown brewery and is used as a recreation center for anti-aircraft and balloon regiments.

Last year the council gave free service by appropriating $90 for light and $300 for water out of city utility funds. Only one-third of this was used and E. R. Bowden of the Georgetown Hut committee asked the council to continue the appropriation.

To Keep Water Rights

ACTION on two house joint resolutions pertaining to control of state waters and postwar planning was completed by the state legislature last month. The first resolution

stipulated that "it is the policy of the state of Washington to maintain its jurisdiction and control over the rights of the waters in this state, and to protect such rights as have been established under the laws thereof," and asked "that constituted authorities of this state take such action as may be necessary to resist attempts to invade the rights of this state in the control of the waters of the state."

The resolution pertained to "differences of opinion" which recently have arisen regarding the rights and powers of Federal and state governments to control and administer the use of waters within the several states.

The latter resolution recommended to the governor, the planning council, university, and state college, that a committee be named to confer and consult on a program of research and experiment in appropriate fields to accomplish "the greatest practicable good" in taking up the postwar industrial slack.

FPC Willing to Grant Request

THE Federal Power Commission on March 15th announced its transmittal of a letter to Kinsey M. Robinson, president of the Washington Water Power Company, granting his telegram request of February 20th for hearing on the commission's order of February 15th directing Washington Water Power Company to act as a "carrier" to transmit and deliver electric power for the account of the Bonneville Power Administration for use at Fort George Wright and an Army hospital near Spokane, Washington.

The letter set forth, however, the commission's belief that, on the basis of the facts stated in the letter, further hearing in the matter was unnecessary and would involve unwarranted expense.

Referendum Ordered

COURT action to test the constitutionality of the emergency clause in Initiative 12, the public ownership measure, with an eye to getting the measure before the people on a referendum vote in the 1944 general election was successful in an unanimous decision of the supreme court of Washington.

The initiative law, with its emergency clause, empowers public utility districts to take immediate joint action to acquire parts or all of a private utility system. The court held the clause invalid and ordered the measure to go to referendum.

It granted a writ of mandamus requiring Secretary of State Belle Reeves to accept the filing of an application for a referendum number. A similar referendum has been twice defeated in previous elections.

Must Pay for Signs

UNLESS specifically provided for by contract, Seattle merchants must pay for operation of outdoor display signs, even though they cannot use them because of dimout regulations. This, in effect, was the ruling last month by Superior Judge Howard M. Findley, in an action brought by a Seattle sign company to force Mr. and Mrs. John F. Kenney to pay for a sign on their tavern.

Wisconsin

Senate Blocks Natural Gas

THE bitter fight over the introduction of natural gas into Wisconsin came to a climax in the state senate recently, but it was a peaceful and quiet climax and friends of the proposal could muster only three votes out of the total 33 in the upper house.

After only moderate debate, the senate voted 33 to 3 to pass and send to the assembly for action a measure which would prevent the introduction of natural gas into the state unless first approved by the state public service commission and also by the governing body of every municipality into which the new fuel was to be sold and distributed.

All senators voted for the bill except Warren Knowles, Republican of New Richmond; Milton Murray, Republican of Milwaukee; and Robert Tehan, Democrat of Milwaukee.

Murray charged that the measure was a "preventive" measure rather than providing for regulation, claimed that natural gas would effect savings for consumers, and pointed out that no other utilities were forced to secure from municipalities permission to operate within their boundaries.

Commission Members Serve

THREE commissioners and one staff member of the state public service commission have been appointed to committees of the National Association of Railroad and Utilities Commissioners for 1943, it was announced recently.

Chairman R. W. Peterson will serve on the special war committee and the committee on progress in the regulation of public utilities, and Commissioner W. F. Whitney was appointed to the executive committee and the committee on coöperation between state and Federal commissions.

Lynn H. Ashley, new commission member, was named to the special committtee to promote uniform motor carrier regulations.

The chief of the Wisconsin commission's accounts and finance department, A. R. Colbert, will serve on the statistics and depreciation committee.

The Latest Utility Rulings

Meter Accuracy and Meter Tests Under War Conditions

RULES of the Pennsylvania commission requiring accuracy of gas meters within 2 per cent of error and requiring testing at least once in five years have been amended as a result of the issuance of Supplementary Order M-43-b by the War Production Board. This order prohibits the use of tin-bearing solder or other tin-bearing material in the adjustment, internal repair, or resealing of tin-cased gas meters unless the meter test ranges in excess of 4 per cent plus or minus of accuracy when tested by a standard meter prover. It also affects the requirement for periodic tests of meters.

Based upon the commission's experience, it was believed that few meters would be found to register inaccurate beyond the permissible error of 4 per cent and that the present testing period of five years if continued would require unnecessary use of labor and material for removing, resetting, and testing meters. The commission changed the error percentage to 4 per cent and waived the requirement of periodic tests until December 31, 1944.

Commissioner Buchanan dissented because the order covers all meters regardless of whether they are tin-cased or otherwise constructed. *Re War Emergency Order No. 10.*

Budget Plan to Avoid Frequent Meter Readings Disapproved

A PROPOSED budget plan termed "a radical departure from what has been done" was denied approval by the New York commission, where admittedly it would result in increasing charges to one-half of the customers. The only saving which might be made under the proposed plan and which could not be made under the company's present plan for billing and collection, it was said, was possible elimination of two clerical employees.

Existing schedules provide for meter readings at 4-month intervals in rural territory and hamlets and at 2-month intervals in cities, larger villages, and adjacent territory. They provide for estimated bills in the months when meters are not read, with right of consumers at their option to read the meter and enter the reading on postcards furnished by the company.

The revisions provided new billing arrangements whereby meters, except for consumers having demand meters, would be read at the end of a 4-month period in all of the territory. The new schedules provided what the company termed a "budget" billing plan under which consumers would pay certain definite and prescribed amounts in the intervening months, when payments would be credited to the consumers' account, and in the fourth month the meter would be read and the consumer billed for the remainder shown due.

Commissioner Brewster said on this point as follows:

> Under this [present] plan of estimated bills for the months when meters are not read, the final bill of the period may be, in a material proportion of cases, considerably out of line with the estimated bills for the prior months. The company states this variation causes

complaints by consumers and necessitates corrections of bills rendered. The company also contends that the proposed billing arrangement will obviate the necessity of such corrections of bills as the entire consumption recorded by the meter for the four months will be computed on a monthly pro rata basis and credit given on the total bill for the interim payments.

The company proposes to add a uniform charge of 15 cents on each interim bill and the final bill for failure to pay within the prescribed net payment period of ten days. It is proposed to eliminate all gross charges from gas rates. Instead of billing gross and net charges, the uniform charge of 15 cents is provided. The company states that consumers rarely take gas service only.

It is proposed to increase the gross initial charge of the electric residential rates from $1.10 to $1.15 and eliminate gross charges in all follow on blocks.

The greater the lapse of time between meter readings, it was said, the farther the bills rendered at intervening months are from actual consumption. Although the commission has permitted extension of the meter reading period to save gasoline and rubber, in this case the proposed extension was in cities and large villages where meter readers do not have to travel long distances. The company did not claim any material saving in gasoline and rubber from the change. *Re Central Hudson Gas & Electric Corp. (Case 11069).*

Appointing and Removal Powers of Governor Not a Bar to Fair Hearing

THE fact that commissioners hold office at the will of the governor does not deprive utilities of constitutional rights, according to a ruling of the Vermont Supreme Court. An order of the state commission requiring the continuance of water service had been attacked on the ground that the members of the commission were disqualified and the commission was constituted in violation of the constitutions of Vermont and the United States. It was asserted that there was a violation of the constitutional requirements that every person obtain justice freely, completely, and without denial; that executive and judiciary departments be kept separate and distinct; and that due process of law shall not be denied.

In Vermont commissioners are appointed by the governor for 6-year terms but the governor is given power to remove a commissioner in his discretion without hearing. The court, however, refused to assume that power of removal would be abused by the governor. There was no claim or even hint that the governor had in any way influenced the commission in the disposition of the case under consideration. As to whether he should have this power of removal was for the legislature, rather than the court, to decide.

The commission, it was pointed out, is to be classed as an agency of the legislature and is not a court in the strict sense. *McFeeters et al. v. Parker, 30 A(2d) 300.*

Consistency in Decisions Not Essentially Wrong

AT a time when the force of precedents is often disparaged it is interesting to note a statement by Circuit Judge Dobie of the Federal District Court, western district of Virginia, that "a sound decision of the commission cannot be condemned simply because it is in harmony, rather than in conflict, with a previous decision of the commission."

This statement was made in a case relating to the action of the Interstate Commerce Commission denying an application for authority to purchase certain operating rights of a motor carrier.

The order had been attacked on the ground that it hinged upon an error of law in that the commission acted on the assumption that it was without power to approve a "split" route and committed itself to a blind adherence to one of its previous decisions concerning such "split." The court did not find that the commission had decided the case erroneously.

It was said that although the commission is not bound to be consistent in its rulings, there is certainly no legal requirement that the decisions of the commission be inconsistent. The opinion continues:

> And we are not aware of any rule of law that makes chaos and conflict compulsory. Surely nothing prohibited the commission from merely referring to and incorporating in its instant decision its own ruling in a previous decision, if it wished to avoid the repetition and prolixity attendant upon a restatement of the considerations supporting its action.
>
> We are not persuaded by the argument of counsel that the commission has thereby fallen into the alleged grievous error of rigidity by succumbing to the "pressure brought to bear on all administrative tribunals" in purportedly sacrificing the virtues of flexibility, which are the basis of the delegation of all legislative power, for an assumed usurped judicial theory of *stare decisis*. The notion that only a court (if anyone) can "discover" and "announce" rules of law which are immutable principles to be plucked from the sky and applied with inexorable logic is a philosophy of jurisprudence to which this court does not subscribe.

Virginia Stage Lines, Inc. v. United States et al. 48 F Supp 79.

Lessee Gas Company Allowed to Acquire Stock of Lessor

An application by Consumers Gas Company seeking approval of the purchase from time to time of shares of capital stock of Reading Gas Company from nonaffiliated interests was approved by the Pennsylvania commission. Consumers Gas operates properties in the city of Reading and adjacent boroughs and townships under a 99-year lease of property and franchises from Reading. Upon expiration of the lease in 1984 Consumers Gas has an option to acquire the properties for $600,000.

A special fund was established by the board of directors in 1934 to provide for the exercise of the option to purchase. This has been invested in interest-bearing obligations of the commonwealth of Pennsylvania and of the United States. From time to time these obligations have been disposed of and the proceeds reinvested in shares of Reading capital stock. Income from the fund is added to the fund.

The company proposed that when the property and franchises of Reading are acquired either prior to, or upon expiration of, the lease, the cost thereof to be charged to utility plant account will be the actual purchase cost or the option price of $600,000, whichever amount is lower. The commission found that

> 1. If all the shares of Reading now held by nonaffiliated interests are acquired by applicant, a merger of the two companies could be consummated, resulting in the cancellation of the lease agreement now in effect, thereby relieving applicant of the expenses and liabilities now imposed upon it.
> 2. If only a part of the shares now held by nonaffiliated interests are acquired by applicant it is assured of a return on its investment because funds for the payment of dividends thereon are being made available by applicant itself in the form of rental.

Approval was granted subject to conditions that no funds other than those comprising the special fund should be used for stock acquisition except upon approval by the commission; that the special fund should not be increased without approval by the commission; and that approval should not be construed as requiring the commission to fix a valuation on the property and franchises equal to the aggregate costs of shares of capital stock acquired by Consumers Gas or to approve or prescribe rates sufficient to yield a return thereon.

Commissioner Beamish voted in the negative.

Commissioner Buchanan filed a dissenting opinion, stating that the source of the investment account, whether from excess earnings, a charge to income as a deduction from a reasonable return, or a charge to operating expenses, did not appear in the record. The record, he said, was devoid of cost figures for property. He observed that a great portion, if not all, of the original Reading property might have been renewed or replaced by Consumers Gas through charges to operating accounts.

Payments under the lease, he said, made the lease contract one of the best investments on record so far as Reading stockholders are concerned, and one of the most inequitable burdens on record as far as the ratepayers are concerned.

The dissenting commissioner also criticized the proposal for accounting. He said the amount to be finally charged to utility account is the original cost of the property at the time the lease was executed. *Re Consumers Gas Co. (Application Docket No. 61814).*

Commission Cannot Change Rates Fixed by Contract for Extension

A PETITION by the owner of a real estate tract for a reduction in rates established by an extension contract was dismissed by the Connecticut commission for lack of jurisdiction. It was ruled that it is the public interest and welfare, as distinguished from the interest and welfare of a particular customer, which justifies the exercise by the commission of its police power to modify contracts between a utility and its customers.

A water extension had been made under an agreement to pay the company each year, as revenue, 10 per cent on the cost of the extension until a sufficient number of customers receiving water from the extension would afford the company the same minimum revenue for water billed under the general rates for water applicable to household customers. A further extension was later made on the same terms. Revenues from these extensions never equaled the minimum guaranty. Later the company extended the water main to serve an adjacent piece of property owned by other individuals. This latter development prospered and revenues were sufficient to eliminate the minimum guaranty required under the extension contract.

The petitioner claimed that if revenues received from customers located on the third extension should be merged with revenues received from the two extensions serving it, the total would be sufficient to eliminate the minimum guaranty. It was further claimed that the minimum guaranty required was unreasonable and discriminatory and that the commission should consider all three extensions together and upon the facts so disclosed exercise its powers to modify downward the minimum guaranty required under the two contracts of the petitioner.

No authority for such action was found in the statute giving the commission broad powers to meet all manner of conditions of unfair and unreasonable treatment of members of the public in the matter of service and rates. Looking at the issue from the standpoint of discrimination, the commission declared that it could not be said that discrimination exists when customers are not similarly situated. Since the regular rates of the company applied to these extensions of the petitioner would not yield the company fair compensation, there was no similarity between its situation and the situation of customers paying rates yielding fair compensation. The commission concluded:

> In essence, this petition appears to set forth circumstances where the contracts between the petitioner and The Guilford-Chester Water Company appeared provident for the petitioner at the time of their execution but subsequent events beyond the control of either party have rendered the contracts im-

provident. In order to make these contracts provident again, the petitioner would "borrow" from the revenues of the third extension which served different customers of the company and which extension appears, in the light of subsequent events, to have been providently made. Should the company under these circumstances be required to modify its contracts with the petitioner in the manner sought, there would appear to be no stability for a contract entered into in good faith by both parties and, lacking such stability, extensions of service by the company under similar circumstances could only be undertaken with considerable reluctance or not at all.

Re Clarke et al. (Docket No. 7258).

Rates for Service to Another Public Utility Are Subject to Regulation

THE Wisconsin commission has ruled that rates for wholesale service which a public utility furnishes to other public utilities are subject to its jurisdiction regardless of whether such utilities are publicly or privately owned. The Wisconsin Power & Light Company had raised the question of jurisdiction.

The commission distinguished the situation from that presented in Union Falls Power Co. *v.* Oconto (1936) 221 Wis 457, 265 NW 722, and in Ford Hydro-Electric Co. *v.* Aurora (1932) 206 Wis 489, 240 NW 418, where it was held that companies were not public utilities merely because of the fact that they furnished electric energy to municipalities which were electric public utilities. It was said that if Wisconsin Power & Light Company disposed of no electric energy except to public utilities, it might not be a public utility. But it was engaged in furnishing electricity to the public generally within the territory, and all of its service was in the public utility classification.

After disposing of the jurisdictional question the commission ruled that there should be no difference in rates to private and municipal utilities. It was also ruled that where special services and facilities are furnished in excess of those contemplated and provided for under schedules, the resale customers furnishing them should be compensated. *Re Wisconsin Power & Light Co. (2-U-1875).*

Abandonment of Gas Service to Intermediary Permitted

AUTHORITY to discontinue and abandon the sale of natural gas to W. S. Fees was granted on application to the Federal Power Commission by Consolidated Gas Utilities Corporation, where it was shown that pursuant to directions issued by the War Production Board under Limitation Order L-31 the applicant was required to deliver a large amount of gas into the distribution system of the Gas Service Company of Wichita, Kansas. The company would be unable to do so if required to continue the sale of gas to Fees.

Fees owned no facilities and rendered no service in connection with the sales of gas, but the applicant delivered the gas directly into the lines of the Cities Service Gas Company at two points in Rice county, Kansas. A contract between the applicant and Fees had expired on August 9, 1942, but service had been continued under the provisions of the expired contract pending the commission's action. The Gas Service Company is an affiliate of Cities Service Gas Company and obtains its gas from the latter. Thus, the deliveries of gas by the applicant to the Gas Service Company would reduce its demands for gas on Cities Service Gas Company to the extent of such deliveries by the applicant. *Re Consolidated Gas Utilities Corp. (Docket No. G-427).*

Other Important Rulings

THE supreme court of Indiana has held that orders approving the sale of utility properties and promulgating rates to be charged by the purchaser are void where signed by two members of the commission in the absence of the third member, who had no notice of, or opportunity to attend, any meeting relating to the matter, notwithstanding a statutory provision that a majority of the commission would constitute a quorum. *Terre Haute Gas Corporation et al. v. Johnson et al. 45 NE(2d) 484.*

An application for approval and sale of $4,750,000 refunding mortgage bonds, 3¾ per cent series due 1963, at a price of not less than 101.46 per cent, was granted by the District of Columbia commission and the commission waived its provisions with respect to competitive bidding. The bonds were to be sold to a group of insurance companies. *Re Washington Gas Light Co. (PUC No. 2424, Formal Case No. 324, Order No. 2498).*

A contract under which an electric company agreed to furnish stepdown transformers capable of reducing the voltage of electrical energy contracted for to 440 volts did not, according to an Illinois court ruling, require the company to supply equipment which would at all times operate and maintain the current at 440 volts. *Hippard Coal Co. v. Illinois Power & Light Corp. 45 NE(2d) 701.*

The court of appeals of New York held that the attempt by a municipality to use the streets for a municipal plant did not constitute an attempted taking of the property rights of an electric company in their easements for use of streets, since the physical properties were not in any way interfered with, and since an attempted grant of an exclusive privilege by private owners in city streets was invalid. A statute permitting the municipality to construct an electric plant for the purpose of lighting its streets and selling electricity to consumers without application to the commission was held not to deprive the utility company without compensation of franchise rights. *East Rochester v. Rochester Gas & Electric Corp. et al. 45 NE(2d) 334.*

Permission was granted by the Federal Power Commission to a pipe-line company, which had been authorized by presidential order to construct, operate and maintain facilities for exportation of gas to Mexico, to mortgage its facilities at or near the border, provided that this authorization should not be construed as authority to pledge, mortgage, or otherwise encumber the presidential permit. *Re Border Pipe Line Co. (Docket No. G-228).*

The Arkansas Supreme Court held that the commission has power to establish intrastate trucking rates for common carriers without simultaneously establishing minimum rates for contract motor carriers. *Southeast Arkansas Freight Lines, Inc. et al. v. Arkansas Corporation Commission, 166 SW(2d) 262.*

A Texas court denied the right of the commission to decide whether motor carrier operation by a railroad through its subsidiary was beyond the charter powers of the railroad, or whether such operation constituted illegal employment or use of stock of the railroad, since these are legal questions for judicial determination. *English v. Landa Motor Lines, 166 SW(2d) 721.*

A municipal utility district, according to an Oregon court ruling, may sell and distribute electric energy without owning or operating a hydroelectric power plant. *Ollilo v. Clatskanie Peoples' Utility District, 132 P(2d) 416.*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

VOLUME 47 PUR(NS) NUMBER 2

Points of Special Interest

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RE CABOT, INC.

FEDERAL POWER COMMISSION

Re Godfrey L. Cabot, Incorporated

[Docket No. G-407.]

Re Cabot Gas Corporation

[Docket No. G-406.]

[Opinion No. 86.]

Service, § 238 — Abandonment — Depleted gas supply — Proof.

1. An applicant for authority to abandon natural gas facilities and service to industries, towns and villages, and homes and school buildings heated by gas, at the beginning of winter and with wartime scarcities and limitations obtaining, is properly held to be convincing proof of the specific conditions of § 7(b) of the Natural Gas Act, 15 USCA § 717f(b), namely, that the available supply is depleted to the extent that continuance of service is unwarranted and that present or future public convenience or necessity permit such abandonment, p. 67.

Commissions, § 46.1 — Concurrent hearings — Federal and state — Independent action.

2. Concurrent hearings on applications for authority to abandon gas service, conducted by a trial examiner of the Federal Power Commission and by a state Commissioner, not constituting a joint hearing and separate records being kept, do not preclude independent action by each Commission, p. 67.

Service, § 238 — Abandonment — Natural gas — Depleted resources — Dissipation of supply — Representations to consumers.

3. The basic and ultimate question with which the Commission is confronted on an application for authority to abandon natural gas service is the sufficiency of the applicant's presently available supply of natural gas, in spite of evidence as to dissipation and exploitation of natural gas supply and misleading representations to consumers with respect to the continuation of service, p. 70.

Service, § 246 — Abandonment — Natural gas — Winter season — Delay.

4. An applicant for authority to abandon natural gas service, during a winter season, because of a depleted supply, when discontinuance of service would have quite serious and perhaps fatal results, should be required to supply consumers through the current winter season to the very limit of capacity to purchase or produce, p. 71.

Service, § 223 — Abandonment — Contract as a factor.

5. That a contract between a wholesale natural gas company and a distributing company is an undertaking to furnish gas until a specified date and that there is no similar contract with other customers is immaterial on the question of abandonment of service to other customers, in view

of the fundamental principle that no obligation of a contract can extend to defeat the legitimate government authority, p. 72.

Service, § 246 — Abandonment — Opportunity to provide other service — Notice — Natural gas.

6. Communities and industries which have enjoyed natural gas service are entitled to a reasonable period for readjustment before abandonment of service because of a depleted supply is authorized, so as to enable them in an orderly way to substitute other fuels or other services, and industries engaged in war production should not be cut off on insufficient notice in order to make the pipeline available for other war industries elsewhere, p. 73.

Discrimination, § 200 — Service — Abandonment — Contracts.

7. A natural gas company proposing to abandon service because of a depleted supply must not discriminate or grant an unreasonable or unlawful preference to any customer by reason of any supposed right presumed to arise out of contract or otherwise, p. 73.

Discrimination, § 200 — Service — New and old customers — Depleted supply.

8. A natural gas company seeking authority to abandon service to industries, domestic consumers, and others should not deliver gas to utilities or industries whose rights should be subordinated to those of older customers, p. 73.

[January 5, 1943.]

APPLICATIONS *for authority to abandon natural gas service; denied.*

APPEARANCES: For the applicants, Cabot Gas Corporation, Charles G. Blakeslee, New York city and Fred C. Fernald, Boston, Godfrey L. Cabot, Inc., Fred C. Fernald, Boston; for the Commission, Lambert McAllister; for the Public Service Commission of New York, Gay H. Brown and Richard C. Llop, Albany; for Office of Petroleum Coördinator, Frank M. Brewster, Washington; for Pavilion Natural Gas Company, David C. Landis and T. W. D. Duke, New York city, Elliott A. Horton, Geneseo; for New York municipalities: Mount Morris, Elliott A. Horton and William J. Flynn; Fillmore, R. L. Richardson, H. H. Farnsworth, Floyd L. Arnold, L. M. Towner and Andrew F. Haynes; Bath, Alton J. Wightman and Frank Nollett; Geneseo, George D. Newton, Mark F. Welsh and N. H. Grove; Leicester, George D. Newton; LeRoy, Paul A. Boylan; Perry, F. A. Walker; Hume, George D. Newton, C. N. Minard, Thomas A. Greer and R. J. Kopler; Rossburg, C. W. Minard; Warsaw, Harry M. Brown; Avon, William A. Wheeler and Thomas H. Clements; Churchville, John C. Malloch; York, Charles B. Menzie; Livingston county, Denton D. Robinson, County Attorney.

BY THE COMMISSION: Godfrey L. Cabot, Inc., a Massachusetts corporation, and Cabot Gas Corporation, its New York subsidiary, filed their applications August 12, 1942, pursuant to § 7(b) of the Natural Gas Act, 15 USCA § 717f(b), for permission to abandon certain pipe-line facilities and

to discontinue the services rendered by means thereof to communities and industries in western New York. This is the same system discussed in Opinion No. 74, in Re Cabot Gas Corp. Docket No. G–227, decided April 10, 1942, 43 PUR(NS) 182, when sale of the facilities of the applicant in Monroe county, New York, to Rochester Gas and Electric Corporation was approved. In that case it was shown that depletion of Cabot Gas Corporation's available supply of natural gas required reduction of its service obligations, and the Rochester company assumed all of those obligations in Monroe county as a condition of purchase. Now, however, the applicants seek permission and approval to abandon and remove completely the 74.75-mile, 14-inch transmission line of the Cabot Gas Corporation, constituting practically all of its remaining facilities, together with discharge from all present obligations to customers to render service by means of such facilities.

Specifically Cabot Gas Corporation seeks permission of this Commission in Docket G–406:

(a) to abandon the service of natural gas from its 14-inch pipe line to its customers in the state of New York, and

(b) to abandon the transportation of natural gas in its said 14-inch pipe line for ultimate redelivery to Godfrey L. Cabot, Inc.

And by its separate application in Docket G–407, Godfrey L. Cabot, Inc., applies for permission:

(a) to cease supplying natural gas to Cabot Gas Corporation, and

(b) to cease supplying natural gas to Producers Gas Company at points in Angelica and Belmont, county of Allegany, state of New York, and

(c) to cease supplying natural gas to certain customers of Empire Gas and Fuel Company in Allegany county, New York.

[1] Should these applications be granted certain industries, of which several are engaged in war production, numerous towns and villages, including at least several hundred homes and a number of schools and public buildings now heated by gas, might and probably would be, on short notice, deprived of essential services which the applicants have undertaken to render and for which the public has properly relied upon the Cabot companies. In such a case, at the beginning of winter and with wartime scarcities and limitations obtaining, it is proper that the applicants be held to convincing proof of the specific conditions of § 7(b) of the Natural Gas Act, namely, that their available supply of natural gas *"is depleted to the extent that continuance of service is unwarranted,"* and that *"present or future public convenience or necessity permit such abandonment."*

Formal Proceedings

Concurrent Hearing with Public Service Commission of New York

[2] The issues raised here by the Cabot applications are substantially similar to those which must also be considered by the Public Service Commission of the state of New York before abandonment is permitted. The New York Commission by order adopted September 12, 1942, instituted an investigation and set a hearing September 25, 1942, at Rochester be-

fore Commissioner Maurice C. Burritt. Thereupon this Commission set its hearing upon the applications here pending, to be conducted by its trial examiner at Rochester commencing September 25, 1942, concurrently with the hearing before Commissioner Burritt. This was not a joint hearing, separate records being kept, and does not preclude independent action by each Commission.

Interested Participants and Municipalities

Although no petitions to intervene or formal protests were filed prior to or during the course of the hearing, counsel for Pavilion Natural Gas Company and counsel or other representatives of the villages of Mount Morris, Fillmore, Bath, Geneseo, Leicester, LeRoy, Rossburg, Churchville, Warsaw, Perry and Avon, of the towns of Hume, York, and Avon, and of the county of Livingston, appeared and made statements or testified with respect to matters in issue. The Office of Petroleum Coördinator was also represented. After hearing was concluded, formal petitions of intervention were filed by the Pavilion Natural Gas Company and by the town of Hume, both of which were allowed; and briefs were filed by counsel for these interveners, and by counsel for the town of Mount Morris, as well as by applicants and by counsel for this Commission.

Jurisdiction

Neither of the applicants questions the jurisdiction of this Commission nor denies that it is a natural gas company subject in all respects to the requirements of the Natural Gas Act. Godfrey L. Cabot, Inc., a Massachusetts corporation, is admitted to do business in New York and Pennsylvania. It owns facilities in Pennsylvania where it is a purchaser and producer of natural gas. Its principal transmission line connects at the New York-Pennsylvania state line and is integral with the 14-inch transmission line of Cabot Gas Corporation, its wholly owned subsidiary, a New York corporation. Natural gas, produced in Pennsylvania, is transported by both applicants through these facilities in interstate commerce, and is sold in interstate commerce for resale for ultimate public consumption in New York for domestic, commercial, industrial, and other uses. The gas produced in Pennsylvania moves without interruption to various points of use and consumption in New York.

Depletion of Natural Gas Supply and Prospective Shortages

Godfrey L. Cabot, Inc., has written contracts to supply natural gas to Cabot Gas Corporation which obtains gas from no other source, to Southern Tier Gas Company for the village of Bath, New York, and to Producers Gas Company, its largest customer. The contract with Producers was made in 1938 and will not expire until December 31, 1944. Sales to Southern Tier Gas Company were made under a short term contract which has expired and are now on a month-to-month basis. The original contract with Cabot Gas Corporation has also expired and has been extended from time to time by supplemental agreements. Service to this subsidiary may now be canceled on 24-hours' notice under the terms of the written extension agreement now in effect. Large sales are

also being made to North Penn Gas Company from isolated wells in the Wharton Field 21 miles from the nearest Cabot pipe line but which are connected to the Cabot system through intervening gas lines of North Penn. Cabot, Inc., supplies a few minor customers located at Wellsville, New York, near Cabot Gas Corporation's 14-inch line, for the account of Empire Gas and Fuel Company, the gas being transported by the subsidiary and redelivered to Cabot, Inc., at Wellsville.

Cabot Gas Corporation's principal customer is Pavilion Natural Gas Company, which in turn distributes natural gas to some 5,200 consumers in the Geneseo-Mt. Morris area. This applicant also supplies about 240 low-pressure consumers in the villages of Rossburg, Hume, and Fillmore, where it has distribution facilities, and some 40 high-pressure consumers along the route of its main line. The existing contracts applicable to the service to these consumers are such as permit the termination thereof on 24-hours' notice should authorization to abandon the facilities and services involved be granted.

Since the sale of approximately 20 miles of 14-inch transmission line in Monroe county, formerly serving Rochester industries, the total customer demand has of course been somewhat reduced. About 9 miles of the line immediately south of Monroe county as presently operated is useful only for storage of gas, and since all deliveries to Pavilion could as well be made through the Perry connection, 20 miles of this 14-inch line is now relatively useless.

The production of natural gas from several newly discovered sources along the Southern New York line became highly competitive less than ten years ago, and the Cabot interests having carried out successful drilling operations in the Oriskany formations sought a large industrial market in the Rochester area.*

The evidence in the pending case shows that the applicants continue to put their own profits and interest ahead of those of their consumers. Specific proof of this is found in the reduction of storage and in continued service to certain industries and utilities which the record indicates might properly have been curtailed or discontinued. Cabots have storage areas with North-Penn Gas Company and during the summer months of 1941 placed in storage at least 225,000 thousand cubic feet available for withdrawal to meet peak winter demand. However, Mr. Cabot instructed his operators to place no more in storage during the summer of 1942 than could be surely removed from storage during this current winter. The result was that in September, 1942, Godfrey L. Cabot, Inc., had in storage only 139,000 thousand cubic feet and although more was available, only 35,000 thousand cubic feet had been stored during last summer.

It is further shown that the Cabot management, while engaged in soliciting franchises from the towns through

* For a better understanding of the history and background of the Cabot companies and their operations leading up to the present situation, reference is made to the facts disclosed at the hearing in January, 1942, in Re Cabot Gas Corp. Docket No. G-227, as presented in our Opinion No. 74, 43 PUR(NS) 182. See also Incorporators of Service Gas Co. v. Public Service Commission (1937) 126 Pa Super Ct 381, 18 PUR(NS) 256, 190 Atl 653.

which it proposed to build its transmission facilities to Eastman Kodak Company, represented to the interested communities as well as to the Public Service Commission of New York that the Cabot interests were in a position to assure adequate supplies of natural gas for domestic and industrial uses for an indefinite future period. There was testimony that such representations were made to the management of Pavilion Natural Gas Company and to officials of the villages of Fillmore, Hume, and Rossburg. One witness testified that he had talked with Godfrey Lowell Cabot himself and that Mr. Cabot assured him there would be an ample supply of gas, stating that if the supply from the local fields was insufficient, gas could be brought up from West Virginia where, it is known, the Cabot interests operate extensively. At the hearing numerous municipal officials and representatives made it clear that citizens had relied upon this service, making extensive investments in gas appliances, and they protested forcefully and with some indignation against a sudden withdrawal of much needed fuel, particularly during this time of war shortages when there are unusual difficulties involved in obtaining the parts and service to convert burners to other types of fuel. A plumber with a place of business at Rossburg testified without contradiction that during last September, the month of the hearing, he installed several gas appliances with the knowledge and approval of Cabot's local agent.

[3] However, in spite of the fact that the Cabot interests have dissipated and exploited their supply of natural gas in the New York-Penn area to the ultimate loss, disadvantage, and inconvenience of the large number of its domestic consumers, and in spite of the fact that their representatives made to prospective consumers misleading representations with respect to the continuation of the supply of natural gas, the basic and ultimate question with which we are here confronted is the sufficiency of the applicants' presently available supply of natural gas.

It is a clearly established fact that this supply of natural gas within the New York-Penn producing area is rapidly reaching a point of complete exhaustion. To require the applicants at this time to deliver gas to these consumers from their fields in West Virginia would immediately present two serious problems—first, the question of the availability of transportation facilities, and second, the question of the relative need for that gas in the area in which it is being produced. It is clear from the evidence that natural gas cannot be made available to Cabot or to Cabot's consumers from any other source in the area adjacent to the pipe line, the abandonment of which is sought herein. From whence then can these consumers' demands be supplied if the applications herein are approved?

Pavilion has some few gas wells and an artificial gas plant capable of producing a sufficient quantity of mixed gas to supply the requirements of all of its customers for other than space heating, with probably a small amount available for that purpose. If this plant were now in operation, the demands upon Cabot's supply of natural gas would be considerably diminished. However, in spite of the fact that Pavilion has had ample notice of the imminent exhaustion of this source of

natural gas, they have taken no steps toward converting their distribution system from natural to mixed gas. This transition will require about four months' time.

[4] In the light of these circumstances, the conclusion appears inevitable that during the current winter season Cabot Gas Corporation's consumers along the pipe line in question are and must be solely dependent upon Godfrey L. Cabot, Inc.'s supply of natural gas for cooking, heating, and other purposes. Many of them also have had notice of the approaching exhaustion of this supply of gas. Many of them have converted their equipment to other types of fuel, but many have not. The discontinuance of service to these consumers at this season of the year would obviously have quite serious and perhaps fatal results. Under such circumstances it appears necessary to require the applicants to continue to supply these consumers through the current winter season to the very limit of their capacity to purchase or produce.

Except for relatively small estimated deficiencies through next March, Cabot's own estimates indicate that their supply of natural gas will be reasonably adequate through June, 1943. However, there is evidence in this record that there may be some shortages during the present winter and doubtless the Cabot management may find it necessary to operate with great care and skill to avoid serious consequences during possible periods of extreme winter demand. They may be faced with the necessity of borrowing gas, and of curtailing some of their customers. These, however, are not exceptional or insurmountable difficulties.

It is therefore concluded that Godfrey L. Cabot, Inc.'s available supply of natural gas is not depleted to the extent that discontinuance of service is warranted, but that on the contrary the circumstances require the continuance of such service at least throughout the current winter period. Too much emphasis, however, cannot be placed upon the fact that the complete exhaustion of this supply of natural gas is rapidly approaching and that unless prompt and immediate steps are taken by all concerned there will come a time in the not far distant future when natural gas will no longer be available from this source.

Public Convenience and Necessity

Although the issue of preference and discrimination was not considered in these proceedings, and neither Producers Gas Company nor the other companies purchasing gas for resale were parties, it is proper and pertinent to the actual issues to make clear that the Natural Gas Act forbids preference or discrimination between customers, in the following terms:

Section 4(b). "No natural gas company shall, with respect to any transportation or sale of natural gas . . . (1) make or grant any undue preference or advantage to any person or subject any person to undue prejudice or disadvantage, or (2) maintain any unreasonable difference in . . . service, facilities, or in any other respect, either as between localities or as between classes of service."

The record of these proceedings reasonably justifies the inference that Godfrey L. Cabot, Inc., intends to continue undiminished its service to Producers Gas Company through its 8-

inch Sanford connection, if permitted to discontinue the service through the Cabot Gas Corporation's 14-inch line at Angelica. Although formally notified of these proceedings by registered mail, Producers did not protest or intervene. The contract of Godfrey L. Cabot, Inc. to supply Producers, made in 1938, will not expire until December 31, 1944.

[5] It is immaterial that the contract between Godfrey L. Cabot, Inc., and Producers Gas Company was an undertaking to furnish gas from November 17, 1938, to December 31, 1944, and that there is no other similar contract with other customer of either Cabot, Inc., or Cabot Gas Corporation. It is fundamental as recognized by the United States Supreme Court in Louisville & N. R. Co. v. Mottley (1911) 219 US 467, 482, 55 L ed 297, 31 S Ct 265, 34 LRA (NS) 671, that contracts must be understood as made in reference to the possible exercise of the rightful authority of the government, and no obligation of a contract can extend to the defeat of legitimate government authority.

The prohibitions against discrimination and preference contained in the Natural Gas Act itself merely emphasize and reiterate a principle approved by regulatory Commissions and the courts, as well expressed in United Fuel Gas Co. v. Kentucky R. Commission, 278 US 300, 309, 73 L ed 390, PUR1929A 433, 438, 49 S Ct 150:*

"The primary duty of a public utility is to serve on reasonable terms all those who desire the service it renders. This duty does not permit it to pick and choose and to serve only those portions of the territory which it finds most profitable leaving the remainder to get along without the service which it alone is in a position to give."

There are several industries engaged in war production that are dependent upon the Cabot service. It is necessary that service to these industries be continued without interruption. Two of the more important of these, Lapp Insulator Company and Union Steel Chest Corporation, are customers of Pavilion, where substitution of other sources of natural gas supply may be difficult, if not impossible. The Lapp Company is making special porcelains and steatite for the Army Signal Corps and the Navy and gas free from sulphur is essential to successful production.

We have given consideration to the present urgent need for all available steel pipe, particularly of the larger diameters, for relocation to serve war industries. At the hearing a representative was present from the Office of Petroleum Coördinator, Department of the Interior. This representative testified that other localities have present urgent need for the pipe line which by reason of its large capacity is "less than 2 per cent efficient" now. As the official representative of the Coördinator, this witness made it clear that he

* To the same effect see Salisbury & S. R. Co. v. Southern Power Co. 179 NC 18, PUR 1920C 688, 101 SE 593; In Re Great Western Power Co. PUR1917F 569, 581; North Carolina Pub. Service Co. v. Southern Power Co. 282 Fed 837, 844, PUR 1923A 289, 33 ALR 626 (certioraris denied [1924] 263 US 508, 68 L ed 413, 44 S Ct 164); Industrial Gas Co. v. Public Utilities Commission (1939) 135 Ohio St 408, 29 PUR(NS) 89, 21 NE (2d) 166; Mississippi River Fuel Corp. v. Federal Power Commission (1941) 121 F(2d) 159, 163, 40 PUR(NS) 213.

did not propose removal of the pipe without first providing for the continuance of service to those dependent upon it. He stated that the 75-mile line can probably be removed in about a month's time when it becomes available.

[6–8] Considerations of public convenience and necessity clearly entitle those communities and industries which have enjoyed service from Cabot Gas Corporation to a reasonable period for readjustment, enabling them in an orderly way to substitute other fuels or other services. The industries engaged in war production, now attached to the Cabot system, should not be cut off on insufficient notice in order to make the Cabot pipe line available for other war industries elsewhere. Meanwhile, there must be no discrimination, or unreasonable or unlawful preference to any customer by reason of any supposed right presumed to arise out of contract or otherwise; nor should gas be delivered to utilities or industries whose rights should be subordinated to those of older customers. The stern limitation faced by all is actual inability to continue service when the gas is gone. The approximate date of this finality cannot be accurately predicted from the evidence in this case; but it seems quite near at hand.

Findings and Conclusions

It is clear and unquestioned that both Godfrey L. Cabot, Inc., the Massachusetts corporation, parent company and producer, and Cabot Gas Corporation, a New York corporation, its wholly owned subsidiary, providing the transmission facilities in New York, are natural gas companies within the purview of the Natural Gas Act. Each of said companies is engaged in the transportation of natural gas in interstate commerce and the sale in interstate commerce of such gas for resale for ultimate public consumption for domestic, commercial, industrial, and other uses, and we so find. All of the facilities of said companies described or referred to in the pending applications for abandonment, as well as every service rendered by either applicant by means of such facilities, are found to be subject to the jurisdiction of this Commission.

To justify an order permitting and approving the abandonment of these facilities and the service rendered by means thereof, we must first find in the language of the Natural Gas Act, "that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment." (15 USCA § 717f (b).) We are unable to make either of these findings. On the contrary, upon the evidence submitted by the applicants, we find that reasonably adequate supplies of natural gas are controlled or can be made available by the applicants to enable them to discharge their obligation to render service to all those entitled to receive it at least during the next several months.

We further find that the companies, communities, and individuals, who have entered into contract with the applicants to purchase natural gas, have not had sufficient notice of the alleged depletion of available supplies of natural gas and the prospective in-

ability of the applicants to continue the service which they have held themselves out to the public as prepared and willing to render. We therefore conclude that, at this time, present or future public convenience or necessity does not permit the abandonment by the applicants or either of them of their facilities or service.

Orders will be entered in accordance with this opinion. [Orders entered denying applications.]

FEDERAL POWER COMMISSION

Re Northern Natural Gas Company

[Opinion No. 88.]

Return, § 11 — Basis — Original cost — Depreciation — Working capital.

1. The reasonableness of rates should be based upon the principle of a reasonable return upon the original cost of the property less the depreciation and depletion therein plus an allowance for working capital, p. 75.

Return, § 101 — Natural gas company.

2. A natural gas company purchasing and producing gas and transmitting it through its own pipe line to distributing companies was allowed a return of 6½ per cent upon the rate base, p. 75.

Rates, § 1 — Distribution of reduction — Ultimate consumers.

3. The ultimate purpose of the rate regulatory activities of the Federal Power Commission is the assurance of reasonable rates for ultimate consumers, and the benefits of wholesale rate reductions should pass to the ultimate consumers, p. 76.

[February 4, 1943.]

INVESTIGATION *of wholesale natural gas rates; downward revisions in rates approved.*

By the COMMISSION: As a result of conferences between representatives of the Commission and Northern Natural Gas Company,[1] and after an analysis of pertinent data submitted by the latter for study in connection with its proposal to reduce rates, the company filed with the Commission on February 1, 1943, a proposal to effect a reduction of its rates in the sum of $2,087,000 annually. The Commission has today accepted these rates for filing and by the attached order makes them applicable to all deliveries during and after the regular February, 1943, billing month. This reduction follows by less than one year a smaller reduction in rates which was filed voluntarily by the company.

The basis upon which this reduction in rates was made and the manner in which it was achieved are matters of public interest. This memorandum

[1] Hereinafter sometimes referred to as Northern or company.

opinion is issued for the purpose of making these matters a public record.

The Northern Natural System

The Northern Natural Gas Company owns and operates a natural gas pipe-line system extending 800 miles from the gas fields in southwestern Kansas and the Texas Panhandle through the states of Oklahoma, Kansas, Nebraska, Iowa, South Dakota, and Minnesota. Natural gas is purchased and produced in the states of Texas and Kansas and is transmitted through Northern's own pipe lines to distributing companies in Nebraska, Iowa, South Dakota, and Minnesota.

Northern sells natural gas to thirty distributors serving 390,000 ultimate consumers in 180 communities, including Minneapolis, Des Moines, Sioux City, Fort Dodge, Lincoln, and Omaha.

Basis for Reduction

[1] Recent decisions and opinions of this Commission disposing of formal rate cases before it have definitely established the principles which this Commission considers sound and appropriate for the determination of the reasonableness of rates for electricity and natural gas.[2] These principles may be summarized as a reasonable return upon the original cost of the property less the depreciation and depletion therein plus an allowance for working capital. The reduction in rates made effective by the attached order will reduce the earnings of Northern in conformity with these principles.

Rate base

As of December 31, 1941, Northern reported a plant balance per books of $52,068,740. This balance included $1,213,283 of reported intangibles which is eliminated to arrive at the gross cost of property. The remaining amount, $50,855,457, represents substantially the original cost of the company's property.

As of the same date, Northern reported $11,625,392 as its combined depreciation and depletion reserve. The amount of these reserves is considered to bear a proper relationship to the annual charge to the reserve for the year 1941, to the past depreciation and depletion policy of the company, and to the average age of the property. This amount deducted from the $50,855,457 of gross plant leaves a balance representing net plant of $39,230,065. To this amount there is added $570,000 as a reasonable allowance for working capital. The resulting total of $39,800,065 is the rate base used by the Commission in measuring the reasonableness of Northern's rates.

Revenues, expenses, and excess earnings

For the year 1941, Northern reported operating revenues of $12,427,388. For the same year it reported deductions from revenues totaling $8,832,963, leaving a net operating income of $3,594,425.

[2] Application of a 6½ per cent rate of return to the determined rate base of $39,800,065 results in the amount of $2,587,004 which is all the net income required by the company for it to earn a reasonable return upon

[2] Commission Opinion No. 73 in Docket No. G-124, et al., Re Canadian River Gas Co. (1942) 43 PUR(NS) 205; Commission Opinion No. 80 in Docket Nos. G-200, G-207; Detroit v. Panhandle Eastern Pipe Line Co. (1942) 45 PUR(NS) 203.

the above rate base. The reported net income of $3,594,425 exceeds this amount by $1,007,421.

Two adjustments in the company's revenue deductions increase the amount which will be available for reduction in rates. These adjustments affect: (1) the amount allowed for amortization expense and (2) the amount allowed for Federal normal income and excess profits taxes.

In 1941, Northern reported $165,800 as a deduction from revenue for "amortization of other limited-term gas investment." A review of the nature of this investment and the amount remaining to be amortized indicates that $50,000 is a reasonable allowance for this item at this time. This adjustment adds $115,800 to the previously indicated excessive return of $1,007,421, making a total of $1,123,221.

For the year 1941, the company charged $2,288,700 against revenues for Federal normal income and excess profits taxes. Out of this total, approximately $1,700,000 represented normal income taxes and approximately $580,000 excess profits taxes. A reduction in revenues of $1,123,221, the amount determined above as exceeding a reasonable return, would completely eliminate any liability for excess profits taxes and would materially reduce the amount required for normal income taxes. It has been estimated that the total income tax requirement would be reduced by $1,340,341. This amount added to the $1,123,221 results in a total of $2,463,562 as the amount available annually for a reduction in rates for the entire company operations.

Distribution of reduction

The rates filed by the company on February 1, 1943, represent reductions of approximately $1,900,000 in rates for gas sold to distributors for resale. These reductions, in combination with the previous reductions effective in 1942, result in a total reduction of $2,100,000 in the annual charges for gas sold by Northern for resale to ultimate consumers.

The company's February 1, 1943, rate revision also includes a reduction of approximately $187,000 in rates for direct sales not subject to our jurisdiction. Thus, the combined effect of this reduction with the $2,100,000 reduction in rates for gas sold for resale results in a total reduction of $2,287,000 annually for all classes of service.

Benefits to Retail Consumers

[3] The Commission is mindful of the fact that the ultimate purpose of its rate regulatory activities is the assurance of reasonable rates for ultimate consumers. This purpose has been recognized by the courts, particularly the United States Circuit Court of Appeals for the 7th Circuit in connection with the Commission's order involving the Natural Gas Pipeline Company of America and Texoma Natural Gas Company. In its "Memorandum on Methods of Making Refunds to Customers of the Peoples Gas Light and Coke Company" [3] the court said in part:

"Associated with this problem of costs, one utility serving Nebraska City asks that the refund go to it and

[3] United States Circuit Court of Appeals for the Seventh Circuit, No. 7454, October Term 1941, April Session, 1942.

not to its customers. That it and others may know and plan accordingly, we express our conclusion, and our holding, which is *all refunds which petitioners must make, belong to the consumers,* for whose benefits these proceedings were instituted. The utilities with whom petitioners contracted, were merely conduits, by which natural gas transported by petitioners was delivered to customers by utilities. The refunds do not belong and should not go to the utilities."

The court said further:

"The proceedings which were instituted by Federal Power Commission and furthered by the Illinois Commerce Commission to reduce the natural gas cost to the utilities were for the benefit of the consumers. They so declare. Most of the utilities have steadfastly disclaimed any right to or interest in the refund. They realize that the proceedings were for the benefit of the consumers, not to enrich them."

Referring specifically to certain utilities in states without utility Commissions, the court concluded:

". . . Now one or two of these utilities located where no state supervisory Commission exists, are endeavoring to seize the fruits of the litigation brought for the consumers and retain the money for their own individual gain. It would be a gross travesty upon the proceedings, the outcome if they were to succeed. With their efforts in this respect, we have no sympathy.

"The court will make an order on this finding that the money refunded by petitioners belongs to the consumers and none belongs to the utility or utilities."

The reasoning of the court in this memorandum dealing with refunds of accumulated excess charges appears equally applicable to the situation involving the passing on of the benefits to the ultimate consumers at the time a reduction in wholesale gate rates is filed.

Northern has recognized this relationship of wholesale to retail rates. It is in a position, however, to pass this reduction on only in the case of sales to Peoples Natural Gas Company, which it controls through ownership of all voting stock. Northern has advised the Commission that Peoples Natural Gas Company will undertake the necessary studies for the purpose of determining appropriate adjustments in retail rates to pass on the reduction in wholesale rates to the retail consumers. The Peoples company distributes gas in 70 communities, the largest of which is Rochester, Minnesota. The total reduction to the Peoples company is $321,000, of which $95,500 is applicable to Rochester, Minnesota.

The Commission has been advised by the city of Minneapolis, which has jurisdiction over local rates, that any reduction in the cost of gas to the Minneapolis Gas Light Company would be "immediately reflected in rates charged the users of gas." The reduction in gate rate to the Minneapolis Gas Light Company is estimated to be $262,000 annually.

The largest single reduction to any distributor is the $323,000 to the Iowa-Nebraska Light and Power Company. This company distributes gas in 35 communities, including Lincoln, Nebraska. The amount of reduction ap-

plicable to sales to Lincoln, Nebraska, alone is approximately $205,000.

Exhibit A to the attached order lists all the distributors which purchase gas from Northern. (A summary of the total amount of the reduction applicable to each distributor is shown on Sheet 1 of the exhibit. On the remaining sheets of the exhibit there is listed each community served by distributors and the amount of reduction applicable to each community. This information is attached to the order so that each distributor and each community may be advised of the estimated reduction applicable to it, thereby enabling prompt consideration of an appropriate reduction in the retail rates in each case.)

Coöperative Procedure

Since the passage of the Natural Gas Act, Northern has coöperated with the Commission in meeting the requirements of regulatory procedures to which the act subjected the company for the first time. It has voluntarily brought in its rate problems for discussion and has adopted many suggestions made by the staff. Illustrative of this attitude was its adoption in 1942 of simplified uniform rates in lieu of the hundreds of separate contracts with customers under which the majority of the companies operated.

Beginning in November, 1942, the city of Minneapolis undertook to obtain a lower wholesale rate for sales to the Minneapolis Gas Light Compony so that the city might require the latter company to reduce its rates to the ultimate users in the city. Discussions had reached the point in December, 1942, where Northern had considered an over-all reduction of $1,200,000 in rates of which the share to the Minneapolis Gas Light Company was $150,000. At this point of agreement the company, in conformity with its practice of discussing such matters with the Commission, placed the problem informally before it.

During this same period the Commission had under consideration the adoption of an order of investigation of Northern based upon its 1941 earnings record. When representatives of the company advised the Commission of its plans for a general reduction in rates, the proposed order of investigation was set aside to afford an opportunity to reach an informal agreement regarding the amount of reduction that would be reasonable.

From the inception of these discussions, there was complete agreement between representatives of the company and the Commission that the computation of excessive returns (and consequently, the amount of reduction to be effected) would be in conformity with the regulatory principles established by the Commission in its recent natural gas rate case opinions and orders. These principles allow a reasonable rate of return on the depreciated original cost of the property, reasonable allowances being made for operating expenses, depreciation, and taxes. Northern was requested to submit its computation in full showing its determination of the amount of excess earnings on this basis. The Commission staff also prepared such statements. A conference followed at which the results of the two statements were compared and discussed. The differences found in the statements

were not large and it was determined that the results contained in the staff's estimates were substantially correct.

After consideration, Northern agreed to reduce its rates in accordance with the amounts shown as indicated by the staff's studies. By this action the company and the Commission were saved considerable expense that would otherwise have been required if a more extended formal investigation were to be made and hearings held.

This case and the others like it are examples of regulation made effective and simple by the use of the original cost formula and acceptance of the principles by the companies involved. The results are reasonable and fair to the companies and to the public.

Order Making Effective Reductions in Rates

It appearing to the Commission that:

(1) Following conferences with representatives of the Commission, Northern Natural Gas Company, (hereinafter sometimes referred to as Northern) filed on February 1, 1943, certain revisions in its rates for the sale of natural gas for resale representing an estimated reduction of $2,087,000, the details of the reductions by distributors and communities being attached hereto as Exhibit A and made a part hereof;

(2) This reduction in rates taken together with a previous reduction filed less than a year ago will reduce the earnings of Northern on its sales for resale to an amount not in excess of 6½ per cent on a rate base substantially representing original cost less depreciation plus working capital, as described in the memorandum opinion accompanying this order;

(3) Northern has made application, pursuant to the request of the Commission, that the reduced rates be allowed to take effect for all bills rendered for natural gas deliveries during and after the February, 1943, billing month, and it is in the public interest that such retroactive effective date be established.

Now, therefore, in view of the foregoing and for the reasons set forth in memorandum Opinion No. 88 issued with this order

It is *ordered* that:

(A) Original Sheets Nos. 4a and 25a, Revised Sheets Nos. 5, 6, 7, 8, 9, 10, 12, 13, 15, 16, 18, 19, First Revised Sheets Nos. 3 and 24, and Second Revised Sheets. Nos. 2, 4, 11, 14, and 17 to the Northern Natural Gas Company's FPC Gas Rate Schedules be and they hereby are allowed to take effect for all bills rendered for natural gas deliveries during and after the February, 1943, billing month;

(B) The aforesaid sheets shall be deemed to have been filed and published in compliance with the Natural Gas Act;

(C) This order is without prejudice to any findings or orders which may be made by the Commission in any proceedings now pending, or hereafter instituted, by or against the applicant.

Exhibit A
Northern Natural Gas Company
Estimated Effect of Proposed Rates 12 Months Ended November 30, 1942

	Actual Revenue	Revenue Proposed Rates	Reduction in Revenue
Austin Muni. Board	$162,178	$103,824	$58,354
N. F. Banfield Corp.	112	65	47
Cent. Elec. & Tel.	590,224	460,715	129,509
Cent. Natural Gas	62,167	45,437	16,730
Cent. States Elec.	89,422	61,330	28,092
Elkhorn Valley Gas	15,796	10,511	5,285
Hastings Gas Co.	24,911	19,142	5,769
Interstate Power	485,263	411,771	73,492
Iowa Electric Co.	32,036	20,790	11,246
Iowa Electric Lt. & Pr.	116,937	84,682	32,255
Iowa-Illinois (Manson)	13,363	9,054	4,309
Iowa-Nebr. Lt. & Pr.	1,233,123	910,373	322,750
Iowa Pub. Service Co.	185,884	134,650	51,234
Kans.Nebr. Gas Fuel Co.	88,197	59,426	28,771
Minn. Natural Gas	54,644	44,238	10,406
Minn. Valley Natural	487,562	386,981	100,581
Owatonna Muni. System	167,600	136,684	30,916
Nebr. Pub. Service Co.	10,635	7,657	2,978
Northern States	539,706	474,597	65,109
N. W. Light & Power Co.	27,692	19,956	7,736
Peoples Gas & Electric (Except M. C.)	17,101	12,510	4,591
Perry Gas Co.	30,177	19,438	10,739
So. Dak. Public Service Co.	50,441	33,826	16,615
Yankton Gas Co.	70,342	56,745	13,597
Total Non-Rd-1	$4,555,513	$3,524,402	$1,031,111
Co. Bluffs Gas Co.	$314,802	$244,828	$69,974
Peoples Gas & Elec. (M. C.)	1,104,638	1,054,006	50,632
Mpls. Gas Light Co.	2,041,323	1,778,439	262,884
Iowa Pr. & Lt. Co.	388,279	327,101	61,178
Iowa Elec. Lt. & Pr. (Boone)	6,269	4,517	1,752
Iowa-Illinois (Ft. Dodge)	458,815	407,903	50,912
Sioux City Gas & Electric	588,457	527,326	61,131
Metropolitan Utilities	430,502	345,157	85,345
Total Rd-1 & 2-pt.	$5,333,085	$4,689,277	$643,808
Total Non-Sub.	$9,888,598	$8,213,679	$1,674,919
Peoples Nat. Gas	$1,642,362	$1,320,886	$321,476
Total Non-Rd-1	$6,197,875	$4,845,288	$1,352,587
Total Rd-1 & 2-pt.	5,333,085	4,689,277	643,808
Total	$11,530,960	$9,534,565	$1,996,395
Direct Sales	$2,086,213	$1,995,151	$91,062
Total	$13,617,173	$11,529,716	$2,087,457

Exhibit A (Continued)
Northern Natural Gas Company
Estimated Effect of Proposed Rates 12 Months Ended November 30, 1942

	Actual Revenue	Revenue Proposed Rates	Reduction in Revenue
Austin Municipal Bd.			
Austin	$162,178	$103,824	$58,354
N. F. Banfield Corp.			
Streverling Woods	$112	$65	$47
Cent. Elec. & Tel.			
Columbus	$59,378	$38,637	$20,741
Sioux Falls	530,846	422,078	108,768
Total	$590,224	$460,715	$129,509
Cent. Nat. Gas Co.			
Hawarden	$8,155	$6,026	$2,129
Vermillion	54,012	39,411	14,601
Total	$62,167	$45,437	$16,730
Cent. Sts. Elec. Co.			
Homer	$3,175	$2,015	$1,160
Lyons	4,431	2,741	1,690
Pender	6,687	4,294	2,393
Rosalie	822	529	293
Thurston	980	719	261
Walthill	5,449	3,442	2,007
Winnebago	4,127	2,547	1,580
Belmond	10,167	6,741	3,426
Britt	10,972	8,165	2,807
Fairmont	29,891	21,183	8,708
Garner	12,721	8,954	3,767
Total	$89,422	$61,330	$28,092
Co. Bluffs Gas Co.			
Co. Bluffs	$314,802	$244,828	$69,974
Elkhorn Valley Gas			
Hooper	$5,848	$3,913	$1,935
Scribner	9,948	6,598	3,350
Total	$15,796	$10,511	$5,285
Hastings Gas Co			
Hastings	$24,911	$19,142	$5,769
Interstate Power Co.			
Albert Lea	$350,492	$304,112	$46,380
New Ulm	90,253	79,167	11,086
Waseca	44,518	28,492	16,026
Total	$485,263	$411,771	$73,492
Iowa Electric Co.			
Atlantic	$32,036	$20,790	$11,246
Iowa Electric Lt. & Pr. Co.			
Jefferson	$43,660	$30,367	$13,293
Ames	61,652	45,551	16,101
Nevada	11,625	8,764	2,861
Total	$116,937	$84,682	$32,255

Exhibit A (Continued)
Northern Natural Gas Company
Estimated Effect of Proposed Rates 12 Months Ended November 30, 1942

	Actual Revenue	Revenue Proposed Rates	Reduction in Revenue
Ia.-Ill. Gas & Electric Co.			
Manson	$13,363	$9,054	$4,309
Ia.-Nebr. Lt. & Pr. Co.			
Avoca	13,809	9,232	4,577
Carson	3,535	2,329	1,206
Griswold	3,422	2,343	1,079
Oakland	7,422	4,805	2,617
Walnut	4,155	2,667	1,488
Adams	2,922	2,045	877
Arlington	5,262	3,560	1,702
Beatrice	87,555	61,842	25,713
Bee	406	276	130
Blair	18,342	11,694	6,648
Clatonia	1,134	722	412
Cortland	810	478	332
Craig	1,558	963	595
Crete	47,338	38,235	9,103
David City	16,213	10,861	5,352
De Witt	3,270	2,174	1,096
Dorchester	2,207	1,430	777
Friend	5,639	3,591	2,048
Hallam	1,363	918	445
Lincoln	858,493	653,087	205,406
Milford	8,557	5,842	2,715
Oakland	11,629	7,651	3,978
Osceola	6,828	4,484	2,344
Plattsmouth	25,071	16,950	8,121
Plymouth	770	455	315
Rising City	2,028	1,330	698
Seward	25,998	17,286	8,712
Shelby	3,628	2,371	1,257
Staplehurst	499	298	201
Stromsburg	7,212	4,667	2,545
Tekamah	11,789	7,596	4,193
Ulysses	2,260	1,594	666
Wahoo	19,197	11,964	7,233
West Point	14,400	9,336	5,064
Wilber	8,402	5,297	3,105
Total	$1,233,123	$910,373	$322,750

Exhibit A (Continued)
Northern Natural Gas Company
Estimated Effect of Proposed Rates 12 Months Ended November 30, 1942

	Actual Revenue	Revenue Proposed Rates	Reduction in Revenue
Iowa Public Serv. Co.			
Audubon	$20,653	$14,228	$6,425
Clarion	22,257	14,840	7,417
Eagle Grove	45,517	35,250	10,267
Exira	9,355	6,632	2,723
Hamlin	123	68	55
Kingsley	5,150	3,661	1,489
Lake City	10,629	6,979	3,650
Lohrville	5,658	3,793	1,865
Marcus	3,954	2,889	1,065
Rockwell City	15,222	9,993	5,229
Sergeant Bluff	13,759	11,541	2,218
Sutherland	8,285	6,489	1,796
Sub-Total	$160,562	$116,363	$44,199
Le Mars	25,322	18,287	7,035
Total	$185,884	$134,650	$51,234
Kans.-Nebr. Gas Fuel			
Fremont	$88,197	$59,426	$28,771
Minn. Nat. Gas Co.			
Lakefield	$7,845	$6,593	$1,252
Worthington	46,799	37,645	9,154
Total	$54,644	$44,238	$10,406
Minn. Valley Nat. Gas Co.			
Chaska	$24,275	$20,360	$3,915
Cleveland	1,172	834	338
Lake Crystal	3,323	2,604	719
Le Center	13,677	9,695	3,982
Le Sueur	25,205	18,458	6,747
Mankato	197,378	144,469	52,909
Montgomery	45,642	38,526	7,116
New Prague	37,558	33,632	3,926
Shakopee	61,293	55,865	5,428
St. Peter	78,039	62,538	15,501
Total	$487,562	$386,981	$100,581
Mun. Utilities System			
Owatonna	$167,600	$136,684	$30,916
Nebr. Public Service Co.			
Dakota City	$2,615	$2,042	$573
Ponca	8,020	5,615	2,405
Total	$10,635	$7,657	$2,978
Northern States Pr. Co.			
Faribault	$154,503	$127,174	$27,329
Northfield	77,672	60,832	16,840
High Bridge	307,335	286,435	20,900
St. Paul	195	156	39
Total	**$539,705**	**$474,597**	**$65,108**

Exhibit A (Continued)
Northern Natural Gas Company
Estimated Effect of Proposed Rates 12 Months Ended November 30, 1942

	Actual Revenue	Revenue Proposed Rates	Reduction in Revenue
N. W. Light and Power Co.			
Cherokee	$27,692	$19,956	$7,736
Peoples Gas & Electric Co.			
Kensett	$1,743	$1,502	$241
Manly	5,614	4,011	1,603
Northwood	7,640	5,501	2,139
Ventura	2,104	1,496	608
Total (Except M. C.)	$17,101	$12,510	$4,591
Perry Gas Co.			
Perry	$30,177	$19,438	$10,739
So. Dak. Pub. Service Co.			
Akron	$10,923	$7,241	$3,682
Alcester	4,227	2,836	1,391
Beresford	9,286	6,018	3,268
Canton	16,473	11,292	5,181
Elk Point	9,532	6,439	3,093
Total	$50,441	$33,826	$16,615
Yankton Gas Co.			
Gayville	$1,676	$1,203	$473
Yankton	68,666	55,542	13,124
Total	$70,342	$56,745	$13,597
Peoples Natural Gas Co.			
Ashland	$11,297	$7,634	$3,663
Elkhorn	4,254	2,938	1,316
Elmwood	3,394	2,334	1,060
Louisville	6,727	4,710	2,017
Fort Crook	36,701	35,190	1,511
Manley	419	283	136
Palmyra	2,268	1,566	702
Papillion	5,100	3,520	1,580
Ralston	8,149	6,554	1,595
Valley	7,532	5,051	2,481
Waterloo	4,863	3,708	1,155
Weeping Water	7,913	5,364	2,549
Auburn	27,009	18,025	8,984
Humboldt	8,010	5,337	2,673
Johnson	1,639	1,113	526
Pawnee City	15.451	10,440	5,011
Sterling	2,907	2,140	767
Table Rock	1,845	1,199	646
Tecumseh	13,329	9,112	4,217
Alden	8,981	6,320	2,661
Estherville	48,120	39,093	9,027
Farmington	54,313	47,249	7,064
Inver Grove	3,417	2,337	1,080
Jackson	25,583	20,692	4,891
Lakeville	9,629	7,707	1,922
New Richland	8,238	5,552	2,686
Rosemount	5,149	3,579	1,570
Sherburn	6,140	4,467	1,673

Exhibit A (Continued)
Northern Natural Gas Company
Estimated Effect of Proposed Rates 12 Months Ended November 30, 1942

	Actual Revenue	Revenue Proposed Rates	Reduction in Revenue
Peoples Natural Gas Co.			
Truman	$5,097	$3,416	$1,681
Welcome	4,731	3,549	1,182
Wells	21,299	14,828	6,471
Fairbury	64,288	50,417	13,871
Forest City	23,087	16,178	6,909
Joice	2,097	1,459	638
Lake Mills	10,894	7,972	2,922
Glenwood	16,735	11,086	5,649
Byron	2,948	2,103	845
Claremont	5,108	2,996	2,112
Dodge Center	8,073	5,332	2,741
Kasson	14,084	9,374	4,710
Mantorville	3,840	2,747	1,093
Boxholm	1,460	928	532
Dayton	5,770	3,169	2,601
Farnhamville	3,781	2,624	1,157
Cowrie	9,342	6,392	2,950
Grand Junction	3,328	2,364	964
Harcourt	2,329	1,540	789
Lehigh	2,597	1,613	984
Ogden	10,906	7,152	3,754
Pilot Mound	457	272	185
Rippey	990	672	318
Woodward	2,729	1,467	1,262
Rochester	485,937	390,401	95,536
Schuyler	11,876	7,856	4,020
Everly	4,147	3,322	825
Hartley	9,412	7,261	2,151
Milford	6,970	5,545	1,425
Paullina	6,098	4,402	1,696
Spencer	28,568	19,723	8,845
Spirit Lake	20,723	17,616	3,107
Bancroft	5,151	3,400	1,751
Emerson	4,257	2,738	1,519
Uehling	406	266	140
Wakefield	6,351	4,084	2,267
Wayne	34,735	25,107	9,628
Blue Springs	1,897	1,182	715
Wymore	11,955	7,618	4,337
Austin Belt Line	134,310	121,551	12,759
Fontenelle	87	61	26
Pleasant Hill	1,263	939	324
Omaha Suburban Area	9,719	6,989	2,730
St. Paul Ind.	294,149	267,949	26,200
Rural Minnesota	4	2	2
Total	$1,642,362	$1,320,886	$321,476

NEW YORK DEPARTMENT OF PUBLIC SERVICE, STATE DIVISION, PUBLIC SERVICE COMMISSION

Re Combined Billing for Electric Service

[Case No. 10752.]

Rates, § 313 — Combined billing — Electric service — Date of new rule — War conditions.

The effective date of an order providing a general rule, applicable to electric companies in the state, to permit combined meter reading for billing purposes only in cases where there is one single-phase low-tension supply and one 3-phase, 3-wire low-tension supply to one customer at a single premise, should be postponed during a war period, when priorities in the purchase of material and equipment may make it impossible for consumers to bring their wiring to a central point, or for the companies to extend their 3-phase, 4-wire delta, 240–120 volts, or 3-phase, 4-wire wye, 208–120 volts, systems, with the result that if the rule is placed in effect at once, increases in charges may result which neither the consumers nor the companies can prevent by changes in the wiring on the consumer's premises or in the company's distribution circuit.

[January 11, 1943.]

PROCEEDING *on motion of Commission as to practice of certain electric corporations of combining under one contract electric service rendered through two or more meters for the purpose of computing bills; effective date of order providing general rule postponed to January 1, 1945.*

APPEARANCES: Gay H. Brown, Counsel (by John T. Ryan, Assistant Counsel), for the Public Service Commission; Whitman, Ransom, Coulson & Goetz (by J. H. Goetz and Edwin D. Kyle), New York city, Attorneys, for Consolidated Edison Company of New York, Inc., Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, and The Yonkers Electric Light & Power Company; Charles G. Blakeslee, Mineola, L. I., Attorney, for Long Island Lighting Company, Queens Borough Gas and Electric Company, and Nassau and Suffolk Lighting Co.; LeBoeuf, Machold & Lamb (by Lauman Martin), New York city, Attorneys, for Central New York Power Corporation, Niagara, Lockport and Ontario Power Company, New York Power and Light Corporation, and Lockport and Newfane Power and Water Supply Company; Naylon, Aronson & Foster (by E. B. Naylon and G. A. Aronson), New York city, Attorneys, for New York State Electric & Gas Corporation, The Patchogue Electric Light Company, and Staten Island Edison Corporation; Whitman,

Dey & Nier (by Earl L. Dey), Rochester, Attorneys, for Rochester Gas & Electric Corporation; L. E. Merrow, Nyack, Assistant to Vice President, Rockland Light & Power Corporation; G. R. Trerise, Gouverneur, Superintendent, Oswegatchie Light & Power Company; W. C. Chanler, Corporation Counsel (by Harry Hertzoff, Assistant Corporation Counsel), New York city, for the city of New York; M. Glockner, Gloversville, appearing for Motion Picture Theatre Association; Gould & Wilkie (by M. S. Lockhart), New York city, Attorneys, for Central Hudson Gas & Electric Corporation.

BREWSTER, Commissioner: This proceeding was instituted by the Commission upon its own motion by order made March 17, 1942. It arose out of the filing by Central New York Power Corporation of the following rule:

"Each service supply shall be billed under a separate contract, except that the meter reading of one single-phase service, 230 volts or less, and of one 3-wire, 3-phase service, 460 volts or less, may be combined for billing under a single contract for an individual customer at one location. The company will continue to combine meter readings for other types of service until March 1, 1942, for any customer whose meter readings were being combined as of August 31, 1941."

In considering this rule the Commission came to the conclusion that before approving or disapproving it for application in the territory of the proponent company, a general proceeding should be instituted and the proposed rule be presented to all electric companies in the state for their consideration and comment and for the purpose of determining whether it should have general application.

At the first hearing, Mr. John T. Kimball, who is in charge of all rate matters for the subsidiary operating companies of the Niagara-Hudson system, testified in support of the proposed rule. He stated that a similar rule was made effective in the western division of the companies of the Niagara-Hudson system about five or six years ago. At that time the western division operating companies made a change in their rate schedules for commercial and small industrial users and which combined use for both light and power in one classification. Under the former schedule the consumer was obliged to purchase his lighting requirements under one classification and power requirements under another. When the change to one classification occurred and it became possible for the consumer to purchase both his lighting and power requirements under one schedule of rates, it became of importance to the consumer who took service through two meters to have the meter readings combined for billing purposes, thereby getting advantage of the lower blocks in the rate schedule. Mr. Kimball emphasized that under the proposed rule combining of meter readings for billing purposes is confined solely to cases where there is one single-phase low-tension supply and one 3-phase, 3-wire low-tension supply to one customer at a single premise. He stated that at the present time in Buffalo there are about 2,800 consumers who have their meter readings so combined.

In the fall of 1941, new rate schedules for commercial and industrial electric service were filed by the Central New York Power Corporation. Although the filed schedules of this company contained a rule requiring separate contracts for each meter and separate billing under each contract, different practices prevailed within divisions of the company relative to billing for service received at one location through two or more meters. In preparing the new schedules a uniform rule was considered desirable.

In Syracuse the practice has been generally followed that the customer requiring lighting at low-tension supply and a small power load also at low tension is required to take two separate contracts and he is billed separately for each service.

In the northern part of the company's territory, including Watertown, Ogdensburg, Malone, and surrounding territory, while the schedule on file with the Commission makes provision for a separate contract for each service supply, the practice is generally to combine meter readings of the two services for billing purposes.

In Utica the customer is given the privilege of either taking two contracts if he requires both kinds of service or of purchasing at his own expense a two to one transformer so that he can take service through one meter.

In the territory of the Central New York Power Corporation there are about 270 cases where the meter readings are being combined and there are about 1,600 cases where there is a separate contract for each service supply. There are about 360 cases where the customer has purchased an insulating transformer.

In the New York Power and Light Corporation territory (eastern division of the Niagara-Hudson system) the practice has been that where a customer wants to take all of his service through one meter he is required to buy an insulating transformer. This is similar to the practice followed in and around Utica. About 500 customers have purchased such insulating transformers in the eastern division. There are about 1,850 cases where customers have a separate contract for each supply.

Mr. Kimball stated that the Niagara-Hudson system companies have had a number of complaints from customers because of different practices in different localities. He also stated that the proposed change "pertains largely to a large group of smaller customers having maybe 10 or 15 horsepower motors in their premises and, as in Syracuse, a transformer vault in the street or in the alley. One circuit is run out of that vault essentially for the power load and another circuit for the lighting load, and an endeavor is made to supply only those two types of services from the respective circuits."

In explanation of the reason for filing the proposed new rule, Mr. Kimball set forth several different causes of customer complaint. He stated that possibly the customer will put in a transformer in order to get his service through one meter, "but some other customers, neighboring customers, may have a power load on that same circuit and in due course there will be a flicker of lights by reason of the starting current on the motors"

of that customer. The first customer who has installed the transformer in order to take service through one meter complains to the company that his service is bad. The company then asks the neighboring customer to rectify his motor starting equipment and he usually replies that "it is no concern of his." The company is then required "to go back to the transformer vault and install regulating equipment, or additional copper between the vault and these customers in order to provide good regulation for the lighting circuit."

Mr. Kimball also called attention to the program of the Buffalo Niagara Electric Corporation to standardize its service upon 3-phase, 4-wire wye system at 208–120 volts. He stated that there was a small amount of this network system in the city of Syracuse and that the New York Power and Light Corporation had a program for its installation in Albany. (This program has been under way in Albany for some years.) Where there is a 3-phase, 4-wire wye system, the consumer can take both power and light through one meter but where there is a 3-phase, 3-wire delta system, the customer takes power over that system and his lighting supply over a single-phase circuit.

Mr. Kimball set forth the several methods of distributing low-tension electricity which are now in common use.

1. Single phase, either 2-wire or 3-wire, 120 or 240 volts. This is commonly used for lighting. The companies prohibit the use of large motors over such a circuit in order to protect regulation for lighting.

2. Three-phase, 3-wire delta, 240 volts. This is for power use only.

3. Three-phase, 4-wire delta, 240–120 volts. (Requiring only one meter for both light and power.)

Note: Matter in parentheses ours.

4. Three-phase, 4-wire wye, 208–120 volts. Both power and light may be taken through one meter.

It is Mr. Kimball's contention that where the company has a 3-phase, 4-wire wye system in a portion of its territory and directly adjoining has a system with single phase at 230 volts or less, and 3-wire, 3-phase service at 460 volts or less, it is discriminatory on the part of the company to charge one consumer less merely because he has the service available through one meter, and another consumer more because he is required to take it through two meters or put in a two to one transformer at his own expense.

Mr. Terry, rate engineer for the Consolidated Edison Company of New York, Inc. system, testified that this company has adopted as its standard the 3-phase, 4-wire alternating current wye system at 120 to 208 volts. He stated that the Consolidated Edison group of companies already have the following provision in their rate schedules:

"The company will supply electric service to each building or premises through not more than one service lateral, except that the company may, for its own convenience or to improve service conditions, install more than one service lateral."

These companes also have the following rule in their schedule as to billing practices for services received through plural meters.

"Plural meters—billing of charges: Where more than one meter is installed because of conditions existing within the property line or on the premises supplied, and not for company purposes, the use of service registered by each meter shall be billed separately, but only three kilowatts of the customer's maximum demand will be included in the energy charge under Service Classifications Nos. 2 and 4.

"Where more than one meter is installed in a building by the company for its own purpose or to improve service conditions, the energy registered by separate meters will be added, and the maximum demands registered by separate demand meters will be added on a noncoincident basis, for billing purposes."

"In order to be billed for coincident maximum demand, the customer shall furnish and install all necessary conduit and wiring between the watt-hour meters and associated metering devices for connection by the company.

"Except in accordance with this provision or in accordance with the provisions of an applicable rider or of a particular service classification, electric service supplied through more than one meter shall not be combined for billing purposes."

There is also the following provision which is applicable to the supplying of service to contractors for construction purposes.

"Where contiguous sections of the customer's work are supplied, the energy supplied to such contiguous sections will be added and the separate maximum demands registered at such contiguous sections will be added for the purpose of determining the amount of the bill."

Mr. Fairman, engineer for the Consolidated Edison system electric companies, testified that there are a number of conditions under which the company determined that the use of two meters was because of company requirements and not because of conditions on the consumer's premises and under which conditions the company combined meter readings for billing purposes.

One condition is where the company serves DC and also serves AC for increment loads and installs 3-phase, 4-wire network system upon which it is standardizing for the increment load and lets the old type system remain for the time being to carry the original load and until the customer or the company wants to get rid of it.

Another condition under which the company combines meter readings is where the customer's load is very large or is so distributed around the premises that a variety of service points is desirable from the company point of view. This is particularly true in tall buildings. A third condition is where the public safety is involved and Mr. Fairman stated as an example of this an emergency lighting circuit in a theater or other place of public assemblage. The company offers as separate a service as it has available for this purpose, and inasmuch as the service comes from a separate set of mains there must be separate meters. There being but one customer at one location and one operation, the company combines the readings for billing purposes.

In cases arising from the progressive substitution of 3-phase for 2-phase service and in connection with the substitution of low-tension for

high-tension service the company combines meter readings.

Where a tenant moves into a building formerly occupied by two or more tenants and his occupancy is not permanent and it would not pay to rewire the premises and the tenant is served through two or more meters for one enterprise, the company frequently combines the meter readings for billing purposes. The company considers that this comes under the heading of service through two meters because of the company's requirements and not because of conditions on the consumer's premises. The consumer's tenancy of the building is not known to be permanent and the company as well as the tenant avoids a change in service installations while lighting conditions remains as they are rather than to make an additional expenditure.

Mr. Fairman also stated that the Consolidated Edison system companies have a few cases left where consumers receive service through a single-phase circuit for lighting, and 2-phase, 4-wire or 3-phase, 3-wire for power. There are some of these in the Bronx and possibly some in Brooklyn. In such cases meter readings are combined for billing purposes by the companies because they consider that the company has chosen to have separate services for lighting and power rather than to incur the cost of extending the network system and that the two meters are therefore required for company purposes.

Mr. Hawkins in charge of rates for the Westchester Lighting Company, testified that while some part of that company's territory is served by 3-phase, 4-wire wye system, most of the territory is served by single phase for lighting, and 3-phase delta system for power. The company is standardizing upon the 3-phase, 4-wire wye system. Pending completion of that system the company furnishes service at different characteristics and a customer may be required to take for an additional load service of a different characteristic than already furnished for the existing load and in such cases meter readings are combined.

Also where single phase is used for lighting and 3-phase delta for power and where the company prefers not to change its own installation at the time, meter readings are combined for billing purposes.

He also stated that in places of public assembly such as hospitals and theaters where two types of service are rendered for emergency purposes, meter readings are combined.

Mr. Hawkins stated that where a customer took single phase for lighting and 3-phase delta system for power under a previous schedule of rates which it did not permit the taking of lighting and power under the same service classification and where a new schedule of rates has been filed permitting the consumer to take both lighting and power under one classification, the company's position is that if the customer wants to take both lighting and power under one schedule, he must bring his wiring to one point and take service through one meter. The company does not consider this the taking of service through two meters because of conditions upon the company's distribution service, but because of conditions on the consumer's premises, that is, because of the consumer's desire to take under one service classification. Mr. Haw-

kins differentiates this from the case in which he testified the company would combine meter readings when the company prefers not to change its own installation to the 3-phase, 4-wire wye system.

It appears from Mr. Hawkins' testimony that in cases where the company has not reached a neighborhood with its program for installation of the new wye system and the only reason for combining meter readings is that the consumer desires to pay for both lighting and power under one classification, the company does not consider that is a condition caused by the company, but that it is a condition caused by the consumer and requires the wiring to be brought to one central location.

Mr. Carpenter, general commercial manager for the Long Island Lighting Company system group of companies, testified that these companies generally render electric service at 60-cycle, 3-phase and single-phase, 208–120 volts. The system has some 2-phase service on the north side of Nassau county and has in parts of the system territory considerable 3-phase, 4-wire wye system. As the 3-phase, 2,300-volt delta distribution system becomes overloaded it is converted into 4-wire, 4,000-volt wye system.

The Nassau & Suffolk Company of this system group has no cases where meter readings are added for billing purposes. The same is true of the Queens Borough Gas and Electric Company. The Long Island Lighting Company has on file a special provision covering billing practices for plural meters, as follows:

"When the company, due to conditions on its distribution system, elects to render service through more than one meter, and where the customer would otherwise be entitled to service through a single meter, then, for billing purpose, the consumption registered by the separate watt-hour meters will be added and the separate maximum demands will be added on a non-coincident basis, unless the expense of wiring and equipment necessary for the measurement of coincidental demands is borne by the customer."

The general policy of this company is to provide a meter for each service and to take an application card or contract from the customer for each service and to furnish separate bills under the applicable rate schedule. There are a few instances in each county that do not fully conform to this practice, but these are being eliminated as rapidly as possible.

In Nassau county there are twenty-nine customers having single-phase lighting meters and 3-phase power meters and where the meter readings are added for billing purposes. The company believes that all of these cases can be eliminated by the use of the new type of 3-phase meter which handles single-phase lighting unless there is some unusual or difficult inside wiring in connection with the particular installation.

(By 3-phase meter, Mr. Carpenter undoubtedly meant 3-phase 4-wire delta secondaries which require only one meter for light and power.)

There are 54 cases in Suffolk county where the customer has a single-phase lighting meter and a 3-phase power meter. The company expects that practically all of these can be eliminated by the use of the new 3-phase meter.

(Three-phase, 4-wire delta services with one meter.)

Note: Matter in parentheses ours.

The Long Island Lighting Company system companies have many large estates as customers. In many cases service is rendered over different distribution circuits on different roads. In some cases there are three, four, or even five meters at different points, each of which meters requires separate reading. These companies protest against any change which would require combining the meter readings of these meters.

Mr. Ginna, assistant to the president of the Rochester Gas & Electric Company, testified that that company has an established policy of requiring one meter for each service to a customer. This company has a rule in its filed schedule permitting the combining of meter readings where more than one meter is required for company purposes, and not because of conditions on the consumer's premises.

The company has 47 cases where customers have an alternating current service and also a direct current service and in these cases the meter readings are combined for billing purposes by superimposing the alternating energy as metered on top of the direct current energy as metered. The company has a few cases where customers are supplied with one power service and a separate lighting service. In each of these cases the company offers a combined service for power and lighting, provided the customer will bring his wiring to a common point.

This company has a 3-phase, 4-wire wye system throughout the city of Rochester, but most of the service in the country along rural roads is single phase. In the villages the company is able to extend 3-phase service.

Mr. Trerise, superintendent of the Oswegatchie Light and Power Corporation, testified that that company has seventeen customers taking lighting service from single-phase and power service from 3-phase circuits. In all cases meter readings are separately billed. The company offers combined lighting and power service through one meter provided the customer will bring his wiring to a central point.

Mr. Foster, rate expert of the New York State Electric & Gas Corporation, Staten Island Edison Corporation, and Patchogue Electric Light Company, testified that the Staten Island Edison Corporation and the New York State Electric & Gas Corporation each have a rule in their filed schedules providing for the combining of meter readings where two or more meters are required for company purposes. The Patchogue Electric Light Company has no such rule.

Excluding the cases where there are two or more meters on customer's premises for company reasons, these companies have the following number of customers with two meters, one of which is single-phase and one of which is for 3-phase service.

Patchogue Electric Light Company	58
Staten Island Edison Corporation	440
New York State Electric & Gas Corp. ..	700

The Patchogue Company and the Staten Island Company have no cases where the meter readings are combined. The New York State Electric & Gas Corporation has 31 cases where meter readings are combined for billing purposes.

If meter readings should be combined in each case where there are two meters per customer, the reduction in revenue would be as follows:

Patchogue	$2,000
Staten Island	7,000
New York State E. & G. Corp.	15,000

In the case of the New York State Electric & Gas Corporation, there are approximately 4,300 customers using single-phase and 3-phase service. Seven hundred of these consumers, as above set forth, are receiving service through two meters and there are 3,600 who take both single- and 3-phase service through one meter. As a rule these latter consumers have installed a two to one transformer in order to take the combined service through one meter.

These three companies oppose any rule requiring a combined meter reading where service is rendered to a single customer on a single premise. Mr. Foster gave as the basis of the opposition the following reasons:

1. There is a greater investment and larger operating expenses on the part of the company to render service where there are two meters and two services.

2. Such a rule would mean a revenue reduction.

3. Such a practice would encourage "a multiplicity of meters in the future. That is, there are many reasons why customers prefer, for their own convenience, to have two meters and if they were added together there would be no inducement for them to take through one meter and one service; such as a meat market that wants to keep its costs separate for the meat department or some other department."

4. This rule would be unfair to the 3,600 customers of New York State Electric & Gas Corporation who have, in the past, made the necessary arrangements and spent the money required in order to take service through one meter.

5. It would mean the company would have to furnish more equipment and more wire, that is, two meters and an extra service and perhaps some other material—meter boxes, maybe even extra secondaries, in order to render service to a customer; more equipment than is really necessary to render him 3-phase and single-phase service.

6. Any combination of these meter readings would create a problem, I believe, as to the determination of demand, particularly in the case of 2-part rates, such as these companies have and would, in the case for instance of the New York State Electric & Gas Corporation, mean either that the company would have to purchase and install some 700 to 1,000 additional demand meters, or would have to revise its schedule to provide that where no demand meter existed the demand would be taken as two kilowatts.

Mr. Foster stated that except for a small area in the city of Binghamton where a 4-wire network system is available, all of the territory of the New York State Electric & Gas Corporation is the same type of system so far as rendering service to customers requiring both single-phase and 3-phase service is concerned. He stated that the policy of the company has been to require the customer to bring his wiring to a central point and furnish the necessary two to one tranformer

and to take service through one meter. All customers of the company are treated alike where the facilities available are the same.

Mr. Gardner, assistant secretary, in charge of rates, of the Central Hudson Gas and Electric Company, stated that this company has a 4-wire, 3-phase network wye system in the main business districts of Kingston, Poughkeepsie, and Newburgh and a certain amount of other 4-wire, 3-phase system.

This company has about 1,000 customers who are served through two or more meters. The witness could not say how many of these customers have both single phase and polyphase service as many of them have two meters supplying single phase in both cases. If the customer desires one bill for all of his service, the company requires him to bring his wiring to a central point and to get his service through a single meter. The company has found that if the customer will bring his wiring to a central point a meter can be installed to measure consumption of both single-phase and polyphase service and that this can be done without the use of a two to one transformer.

About six years ago the company had 2,000 commercial and industrial customers who took service through two or more meters. About 1,000 of these have made the necessary changes and are taking service through a single meter.

This company opposes a general rule which would require the addition of meter readings for billing purposes in view of the fact that a single meter can be installed to measure all of the services supplied the customer at one location, provided the customer will bring his wiring to a central point.

This company has only one case where service through two meters is combined and in that case the company considers that the use of the two meters is for company purposes.

Mr. Gardner testified that in case this rule is required of all companies and meter readings are combined where service is taken through one single-phase circuit for lighting and one 3-phase circuit for power, he estimates the revenue reduction to his company would be about $20,000 annually.

Discussion

In Case No. 6367, PUR1931C 337, 352, which case was a general proceeding as to the rates and rate structures of various corporations supplying electricity in the city of New York and suburban territory, Chairman Maltbie, in his memorandum, made the following statement as to "multiple meters":

"The rates stated above use the phrase 'per meter per month.' It is not intended that the companies should apply this phrase literally. Where more than one meter is installed by the company because of conditions on the company's distribution system, the consumption of such meters should be combined, and only one minimum charge should be levied upon such customer at a given location. Where additional meters are installed at the customer's request or because of conditions existing on the property of the customer, each meter should be treated separately, as if it belonged to a separate customer; the minimum charges should not be combined. Otherwise,

the conjunctional service question is to be unaffected."

It will be noted from the abstract of the testimony of the several company witnesses, which has been set forth herein, that most of the larger electric corporations serving in the state have a provision in their filed schedules conforming substantially to the above-quoted statement from Chairman Maltbie's memorandum, that is, where more than one meter is installed by the company because of conditions on the company's distribution system, meter readings are combined for billing purposes.

In the city of New York where about 95 per cent of the service system is 3-phase, 4-wire, wye and the consumer can take both lighting and power through one meter and where only about 5 per cent of the system is such that the consumer cannot without changing the wiring on the premises take both lighting and power service through one meter, the company, in most instances, construes the requirement of two meters for the 5 per cent of consumers to be required because of conditions on the company's distribution system and combines the readings of meters. The company can extend its standard 3-phase, 4-wire, wye system but if it determines not to do so it construes that determination as placing the onus on the company.

On the other hand, in the case of New York State Electric & Gas Corporation, single-phase or 3-phase delta service is standard and only a fractional amount of its service system property is 3-phase, 4-wire, wye system. The company takes the position that if the customer desires one billing he should bring his wiring to a central point and install a two to one transformer at his own expense. These two cases illustrate fairly the diversities between the physical conditions in the several companies. Some of the companies have physical characteristics in between these extremes. The companies in the western division of the Niagara-Hudson system are endeavoring to standardize on 3-phase, 4-wire, wye network but most of that type of service system is in the city of Buffalo. The Rochester Gas & Electric Corporation has the 3-phase, 4-wire system in the city of Rochester but little of it outside. The New York Power and Light Corporation has considerable 3-phase, 4-wire, wye network in the city of Albany but not much outside. The Central New York Power Corporation 3-phase, 4-wire, wye system is principally confined to a small section of the city of Syracuse.

The rule in effect in the western district of the Niagara-Hudson system and now proposed for the central division confines the combining of meter readings to cases where the consumer is served through one single-phase service and one 3-phase, 3-wire, service. It will be noted from the above abstract of testimony that several companies combine meter readings where other types of service are rendered and where the company construes the requirement of two or more meters to be caused by conditions for which the company is responsible. Adoption of the proposed rule would result in the elimination of combined meter readings in many instances where the companies acknowledge the necessity for plural meters to be caused by condi-

tions for which they, not the consumer, are responsible.

For many years the companies generally have contended, as testified to in this proceeding by Mr. Foster, that there is a greater capital investment and larger operating expenses on the part of the companies where service is rendered through two services and two meters and that this additional cost should be borne by the consumer receiving the service and should not be passed on to other consumers to bear. That if the consumer wishes to take advantage of one billing he should bring his wiring to one central point at his expense. Based upon testimony of record to this effect the Commission has sustained the contention of the companies and as a result many consumers have, at their own expense, brought their wiring to a central point and in many instances have installed two to one transformers. There is nothing in the record in this proceeding to controvert the statement of Mr. Foster that adoption of the rule would call for additional investment and additional operating expenses upon the part of the companies, which additional expenditures would be made in order that the consumer could receive one bill and not because required for the rendering of the service to the consumer.

If the necessity for two meters is caused by the service conditions on the distribution system of the company, meter readings can be combined without the establishment of the rule now proposed by the Central New York Power Corporation.

In cases such as testified to by Mr. Kimball as existing in Syracuse, where the company has single-phase for lighting and 3-wire, 3-phase, for power and also has in some sections a 4-wire network wye system and there appears to be discrimination because the company has not extended the 4-wire wye system to consumers of the same class the company can, if the facts warrant, do as other companies are doing and combine the meter readings. This company did not provide in the proposed rule for combined meter readings where two or more meters are required for company reasons. However, the schedule containing the new rule has been canceled and the existing schedule does contain such a provision.

Much stress has been placed upon the approval of a rule in the Buffalo area similar to the proposed rule. At the time that rule was approved combined meter reading was in practice by the company in that area in certain cases other than where the service rendered was one single-phase for lighting and one 3-phase, 3-wire for power. Upon adoption of the present rule combined meter reading was eliminated in all such cases as a result of the adoption of the new rule. The result was to limit and not to expand the combining of meter readings and that was one of the objectives of the new rule.

Conclusion

It is clear from the record that there is no uniform policy or procedure among the electric companies under the jurisdiction of this Commission as to billing consumers where service is rendered through more than one meter. This wide variation in practice is confusing to consumers having enterprises and taking service in several different localities and is the basis for complaints filed with the Commission.

Because of the different conditions existing in the territories of the various companies any general rule should be sufficiently flexible to meet these different service characteristics.

Because of existing priorities in the purchase of material and equipment it is probably impossible, at this time, for consumers to bring their wiring to a central point or for the companies to extend their 3-phase, 4-wire delta, 240–120 volts, or 3-phase, 4-wire wye, 208–120 volts, systems. If this rule is placed in effect at once increases in charges may result which neither the consumers nor the companies can prevent by changes in the wiring on the consumer's premises or in the company's distribution circuit.

The effective date of the order providing this general rule should be January 1, 1945.

TEXAS SUPREME COURT

M. R. and M. S. Webster et al.

v.

Texas & Pacific Motor Transport Company et al.

[No. 7957.]

(— Tex —, 166 SW(2d) 75.)

Commissions, § 47 — Action as a body — Meetings.

1. The Commission, in exercising statutory powers, must act as a body with a quorum present, and all members must be given an opportunity to be present if it is reasonably convenient for them to be, p. 100.

Commissions, § 47 — Action as a body — Meetings.

2. An order signed by two members of the Commission granting a certificate was void because signed at an informal meeting of which the third Commissioner had no notice, as against the contention that because of the known custom of the Commission to consider itself in session at all times, the law would presume that each member would keep up with the Commission business and make himself available whenever a meeting was to be held, thus dispensing with need for notice of such meeting, p. 100.

[November 11, 1942. Rehearing denied December 16, 1942.]

APPEAL *from judgment sustaining order granting certificate; judgment reversed and order set aside without prejudice. For decision below, see (1941) 159 SW(2d) 902.*

APPEARANCES: Carl L. Phinney, of Dallas, and Looney & Clark, Everett L. Looney, and Charles F. Herring, all of Austin, for appellants; R.

S. Shapard, S. W. Lancaster, and W. O. Reed, all of Dallas, Black, Graves & Stayton and W. A. Keeling, all of Austin, Gerald C. Mann, Attorney General, and George W. Barcus, Assistant Attorney General, for appellees.

ALEXANDER, C. J.: This is an appeal by M. R. and M. S. Webster under the Motor Carriers' Act (Arts. 911a and 911b, Vernon's Texas Civil Statutes) from an order of the Railroad Commission granting the Texas & Pacific Motor Transport Company a certificate of convenience and necessity to operate a common carrier motor carrier service over the highways of this state, from Fort Worth to Sherman, Texas. The district court approved the action of the Railroad Commission in granting the permit, and that judgment was affirmed by the court of civil appeals. (1941) 159 SW(2d) 902.

The material question to be decided is whether there was such a hearing before the Railroad Commission at the time the permit was granted as was required by law.

At the time this certificate was granted the Railroad Commission of Texas was composed of Lon A. Smith, as chairman, and Jerry Sadler and Colonel Ernest O. Thompson. After the application for the permit was filed and the examiner had held a hearing and made his report, the record was presented to Mr. Sadler at his office. He examined the record and then took it to the office of Chairman Smith, and told him that he recommended that the application be granted. The record was left in Mr. Smith's office, without any decision being reached at that time. A few lays later these two Commissioners met somewhere (the record does not show when nor where) in an informal unscheduled meeting, without any previous notice thereof having been given, and agreed that the certificate should be granted. The matter was not considered at any regular meeting, nor at any previously called special meeting. Colonel Thompson had no notice that any meeting was being held for the purpose of considering the application. He was opposed to the granting of the certificate. He was not at the meeting and had no opportunity to attend same. In fact, it is undisputed that at the time this application was passed on, it was not the practice of the Railroad Commission to ever hold any regular or specially called meeting of the Commission as a whole, for the purpose of passing on applications of this kind. At that time it was the practice for one Commissioner to examine the record and then take it to either one of the other Commissioners, whenever and wherever he could be found, and get his approval. No notice was given to the third member that a meeting was to be held for the purpose of passing on the application. The Commission kept no minutes of any such meetings of the Commissioners.

The Railroad Commission of this state is composed of three members. Vernon's Texas Civil Statutes, Art. 6447. As used in our statutes creating and regulating the Railroad Commission, the term "Commission" means "the Railroad Commission of Texas," and the term "Commissioners" means "the members of the Railroad Commission of Texas." Ver-

non's Texas Civil Statutes, Art. 6444; Art. 911b, § 1, subsec. (b).

Article 911b, § 5, provides as follows: "No motor carrier shall hereafter operate as a common carrier for the transportation of property for compensation or hire over the public highways of this state without first having obtained from the Commission, under the provisions of this act, a certificate declaring that the public convenience and necessity requires such operation; . . ." As amended Acts 1931, 42nd Leg. p. 480, Chap. 277, § 5.

Article 911b, § 14, provides: "The Commission shall have the power and authority under this act to hear and determine all applications of motor carriers; to determine complaints presented to it by such carrier, by any public official or by any citizen having an interest in the subject matter of the complaint, or it may institute and investigate any matter pertaining to motor carriers upon its own motion. The Commission, or any member thereof or authorized representative of the Commission, shall have power to compel the attendance of witnesses, swear witnesses, take their testimony under oath, make record thereof, and if such record is made under the direction of a Commissioner, or authorized representative of the Commission, a majority of the Commission may, upon the record, render judgment as if the case had been heard before a majority of the members of the Commission. The Commission shall have the power and authority under this act to do and perform all necessary things to carry out the purpose, intent, and provisions of this act, whether herein specifically mentioned or not, and to that end may hold hearings at any place in Texas which it may designate." Acts 1929, 41st Leg. p. 705, Chap. 314.

[1, 2] A careful reading of the above statute makes it clear that it was the intention of the legislature that the Railroad Commission of this state should be composed of three members, and that the Commission, acting as such, and not the individual Commissioners, should have the authority to grant or refuse applications for permits to operate as common carriers over the highways of this state.

It is a well-established rule in this state, as well as in other states, that where the legislature has committed a matter to a board, bureau, or Commission, or other administrative agency, such board, bureau, or Commission must act thereon as a body at a stated meeting, or one properly called, and of which all the members of such board have notice, or of which they are given an opportunity to attend. Consent or acquiescence of, or agreement by the individual members acting separately, and not as a body, or by a number of the members less than the whole acting collectively at an unscheduled meeting without notice or opportunity of the other members to attend, is not sufficient. 34 Tex Jur 457; 51 CJ 62; State ex rel. Lemke v. Union Light, Heat & P. Co. 47 ND 402, PUR1921D 662, 182 NW 539; McNolty v. Board of School Directors (1899) 102 Wis 261, 78 NW 439; People v. Whitridge (1911) 144 App Div 486, 129 NY Supp 295; Floydada v. Gilliam (Tex Civ App 1937) 111 SW(2d) 761; King v. Guerra (Tex Civ App 1927) 1 SW (2d) 373; Schwanbeck v. People ex rel. Smith (1890) 15 Colo 64, 24 Pac

575; Pottawatomie County v. Shelton (1910) 26 Okla 229, 109 Pac 67, 138 Am St Rep 962; Murphy v. Albina (1892) 22 Or 106, 29 Pac 353, 29 Am St Rep 578; Nason v. Directors of Poor (1889) 126 Pa 445, 17 Atl 616; Thompson v. West (1900) 59 Neb 677, 82 NW 13, 49 LRA 337; First National Bank of Marlin v. Dupuy (Tex Civ App 1939) 133 SW (2d) 238; McAlister v. Frost (Tex Civ App 1939) 131 SW(2d) 975.

In 34 Tex Jur, 457, it is said: "In order that the acts of a governmental or administrative board may be valid it must act as a body. Consent or acquiescence of, or agreements by, the individual members acting separately and not as a body do not bind the board of the political subdivision which they represent, and all persons are chargeable with knowledge that such is the case."

In 51 CJ 62, it is said: "A Public Utility Commission must act as a body and not as an aggregate of individuals, and, while under some statutes individual Commissioners may hold hearings, the final order must be that of the Commission as a whole, acting at a stated meeting or one properly called and of which all the Commissioners had notice or which they were given an opportunity to attend; and an order made by only one Commissioner, although with the consent of the other Commissioners, is not a valid order of the Commission."

The purpose of the above rule, which requires the board to act as a body at a regular meeting or at a called meeting, upon proper notice, is to afford each member of the body an opportunity to be present and to impart to his associates the benefit of his experience, counsel, and judgment, and to bring to bear upon them the weight of his argument on the matter to be decided by the board, in order that the decision, when finally promulgated, may be the composite judgment of the body as a whole. The supreme court of Kansas has ably expressed the object of the rule as follows:

"Nor is this merely an arbitrary rule, but one founded upon the clearest dictates of reason. Wherever a matter calls for the exercise of deliberation and judgment, it is right that all parties and interests to be affected by the result should have the benefit of the counsel and judgment of all the persons to whom has been intrusted the decision. It may be that all will not concur in the conclusion; but the information and counsel of each may well affect and modify the final judgment of the body. Were the rule otherwise, it might often happen that the very one whose judgment should and would carry the most weight, either by reason of his greater knowledge and experience concerning the special matter, by his riper wisdom and better judgment, or by his greater familiarity with the wishes and necessities of those specially to be affected, or from any other reason, and who was both able and willing to attend, is through lack of notice an absentee. All the benefit, in short, which can flow from the mutual consultation, the experience and knowledge, the wisdom and judgment of each and all the members, is endangered by any other rule. Again, any other rule, would be fraught with danger to the rights of even a majority, as, when legally convened the ordinary rule in the absence of special restriction being that a quor-

um can act and a majority of the quorum bind the body; it would, but for this rule, often be in the power of an unscrupulous minority to bind both the body and the corporation for which it acts to measures which neither approve of. Thus, were the body composed of twelve members, a quorum of seven could act, and a majority of that quorum, four, could bind the body. An unscrupulous minority of four by withholding notice to five, might thus bind both the body and the corporation. Reason, therefore, and authority unite in saying that notice to all the members to whom notice is practicable, is essential to a legal special session." Paola & Fall River R. Co. v. Anderson County Comrs. (1876) 16 Kan 302, 309.

The legislature has committed to the Railroad Commission the conservation of the vast natural resources of this state, the fixing of utility rates, and the regulation of the transportation system over both the railroads and the highways of the state. Necessarily, the Commission decides matters of vast importance to the public at large, as well as the litigants who appear before it. Certain presumptions are indulged in favor of its orders and the soundness of its conclusions. Vernon's Texas Civil Statutes, Art. 911b, § 20; Art. 6049c, § 8; 34 Tex Jur 712; 31 Tex Jur 1169; Railroad Commission v. Shell Oil Co. (1942) — Tex —, 161 SW(2d) 1022. The legislature has committed the decision of these important matters to a Commission composed of three members, and has thus evidenced an intention that such matters should be decided by that body acting as such, and it is but right that all parties and interests to be affected by the result should have the benefit of the counsel and judgment of all of the persons to whom has been entrusted the decision. We do not mean to hold that all members of the Commission must be present to constitute a quorum in order to authorize the transaction of business. What we hold is that the members of the Commission must act as a body with a quorum present, and all members must be given an opportunity to be present if it is reasonably convenient for them to do so.

In the case at bar Colonel Thompson, one of the members of the Commission, was denied the opportunity of being present at the meeting at which this application was considered, and of presenting his argument against the petition. He was opposed to the granting of the certificate, and if he had had the opportunity of being present he might have persuaded his associates not to grant it.

Counsel for the applicant asserts that at the time the application in question was acted on it was the custom and practice of the Railroad Commission to consider itself in session at all times, and since all the members of the Commission were familiar with that practice, the law would presume that each member would keep up with the business of the Commission and make himself available at any time that a meeting was to be held, thus dispensing with the necessity of notice of such meeting. It appears, however, that while the Commission did indulge the presumption of continuous session, there was no certainty as to the hour nor the place of the prospective meeting. The meetings appear to have been held wherever and when-

ver two of the members happened to meet. Merely indulging the presumption of continuous session under these circumstances would not solve the problem of affording a reasonable opportunity to all members to be present. We are of the opinion that the application was not passed on by the Commission as a body, in the manner contemplated by law. We should not be understood as holding that an order rendered under the circumstances herein complained of would be held to be void upon collateral attack. This was a direct attack by suit brought for that purpose, as provided in the statute, immediately after the order had been entered.

The applicant relies on the holding of the court of civil appeals in Sunshine Bus Lines v. Railroad Commission (1941) 39 PUR(NS) 27, 149 SW(2d) 228. This court granted an application for a writ of error in that case, but a settlement was reached and the suit dismissed before a decision was made by this court. Any holdings therein contrary to this opinion are hereby overruled.

The judgments of the trial court and the court of civil appeals are reversed, and the order of the Railroad Commission granting the certificate is set aside, but without prejudice to the right of the Railroad Commission to again consider the application for the certificate.

EDITOR'S NOTE.—An order authorizing the sale of a portion of a certificate was void where the application was not considered by the Commission as a body at a meeting held for that purpose, each of two Commissioners signing the order separately and the third member having no notice of the matters under consideration. Houston & N. T. Motor Freight Lines v. Johnson (1942) — Tex —, 166 SW(2d) 78. Rehearing denied Dec. 16, 1942.

MISSOURI PUBLIC SERVICE COMMISSION

Re Lexington Water Company et al.

[Case No. 10,310.]

Corporations, § 16.1 — Contribution to capital — Necessity of authorization.

1. Permission of the Commission is not requisite to the tender and acceptance of a contribution to capital by the sole stockholder of a corporation, p. 107.

Corporations, § 16.1 — Contribution to capital — Subsequent reimbursement.

2. A contribution to capital by the sole stockholder of a corporation, as part of a series of transactions, should be identified as a temporary advance when such stockholders will subsequently be reimbursed, p. 107.

Security issues, § 5 — Redemption — Necessity of approval.

3. A corporation is presently vested with authority to retire securities, and no further authority for redemption is required, when the Commission

has previously authorized the issuance of such securities and, in granting such authority, approved all provisions and conditions of issuance, including those relating to redemption, p. 107.

Security issues, § 38 — Necessity of authorization.

4. Authority sought for the actual issuance of stock is properly before the Commission after a corporation has obtained the necessary authorization from the secretary of state, p. 107.

Security issues, § 44 — Authorization by Commission — Short-term loan.

5. Authority for the issuance of a short-term bank loan, as one step in a series of transactions relating to property transfers, security issues, and other matters, was granted, although permission of the Commission was not required, it appearing that the bank loan was a convenient method of quick financing and was subsequently to be funded with proceeds from long-term obligations, p. 108.

Security issues, § 5 — Cancellation — Necessity of authority.

6. A proposal of one company to relinquish, and of another company to receive and cancel, shares of common capital stock of the latter does not require the authority of the Commission, p. 109.

Corporations, § 14 — Change of name — Necessity of authorization.

7. Authority for a corporation to change its name is for the consideration of the secretary of state and is not within the province of the Commission, p. 109.

Consolidation, merger, and sale, § 22 — Intercompany transfers.

Discussion of the authorization of transfers of water properties, rights, and franchises between companies as part of a plan for financing of extensions and improvements in the territory served, p. 108.

Security issues, § 1 — Mortgage bonds — Debentures.

Discussion of proposals, in connection with property transfers and other matters, to issue first mortgage bonds and unsecured debentures, involving questions of interest rates and provisions of indenture of mortgage and deed of trust for retirement fund, depreciation, maintenance and additions, and terms of redemption, p. 109.

[December 22, 1942.]

APPLICATION *for authority to transfer properties, redeem securities, issue securities, change corporate name, and to make and receive contributions to capital; granted, subject to conditions, to the extent that Commission authorization is required.*

By the COMMISSION:

Scope of Authority Sought

1. To permit the Lexington Water Company to transfer and convey all of its property rights and franchises to Charles S. Mott, its sole stockholder by way of complete liquidation.

2. To permit Charles S. Mott, as sole stockholder, to transfer and convey the property rights and franchises referred to in the preceding paragraph to the St. Louis County Water Company as a contribution to the capital of said corporation.

3. To permit the St. Louis County Water Company to acquire the properties referred to in paragraph number 1 from its sole stockholder, Charles S. Mott, and to own and operate said properties formerly owned by the Lexington Water Company and referred to in paragraph 1.

4. To permit Charles S. Mott, as sole stockholder, to contribute to the paid in surplus of St. Louis County Water Company the sum of $8,085,000 in cash.

5. To permit St. Louis County Water Company to accept the sum of $8,085,000 in cash referred to in the preceding paragraph as a contribution to its paid in surplus from its sole stockholder, Charles S. Mott.

6. To permit St. Louis County Water Company to retire all its outstanding 6 per cent cumulative preferred stock by depositing a sufficient fund with an appropriate depositary.

7. To permit St. Louis County Water Company to retire all outstanding first mortgage bonds by deposit of sufficient funds with an appropriate depositary.

8. To permit Charles S. Mott to acquire all of the issued and outstanding common stock of St. Louis Suburban Water Company (a new corporation) consisting of $1,000,000 aggregate par value of common stock of the par value of $10 per share.

9. To permit Charles S. Mott to make a contribution to paid in surplus of St. Louis Suburban Water Company in the amount of $2,250,000.

10. To permit the St. Louis Suburban Water Company to accept the sum of $2,250,000 in cash, referred to in the preceding paragraph, as a contribution to its paid in surplus from its sole stockholder, Charles S. Mott.

11. To permit St. Louis Suburban Water Company to borrow $8,500,000 as a temporary bank loan to be secured by sufficient collateral.

12. To permit St. Louis Suburban Water Company to acquire 22,000 shares consisting of all of the outstanding common stock of St. Louis County Water Company from Charles S. Mott for a price of $11,724,000 in cash.

13. To permit St. Louis County Water Company to transfer and convey its water properties located in St. Louis County, Missouri, together with the franchise incident thereto, to its sole stockholder, St. Louis Suburban Water Company, by way of partial liquidation and simultaneously therewith to cancel 20,685 shares of its outstanding common stock and to cease doing business as a public utility in St. Louis county, Missouri.

14. To permit St. Louis Suburban Water Company to acquire the properties referred to in paragraph 13 from St. Louis County Water Company and to own and operate said properties and to surrender for cancellation 20,685 shares of the outstanding common stock of St. Louis County Water Company.

15. To permit St. Louis County Water Company to change its name to Missouri Water Company.

16. To permit St. Louis Suburban Water Company to change its name to St. Louis County Water Company.

17. To permit St. Louis County Water Company (after change of name from St. Louis Suburban Water Company) to issue and sell $7,000,000 aggregate principal amount of

its first mortgage 3¼ per cent bonds and to execute and deliver an indenture of mortgage or deed of trust of and upon all of its properties of every kind and character, except current assets and the capital stock of Missouri Water Company, and to secure the payment of all bonds at any time issued under the said indenture of mortgage, including the said $7,000,000 aggregate principal amount of first mortgage 3¼ per cent bonds and to issue and sell $1,500,000 aggregate principal amount of its debentures (unsecured) and to execute and deliver a trust indenture providing for the issuance of the said debentures and to apply the proceeds of the issuance and sale of the said first mortgage bonds and the said debentures to the retirement of its said bank loan in the amount of $8,500,000.

Report and Order

This case is before the Commission upon a joint application, filed December 10, 1942, by Lexington Water Company, Charles S. Mott, St. Louis County Water Company, and St. Louis Suburban Water Company, sometimes hereinafter respectively referred to as Lexington, Mott, Old Company, and Suburban, for authority to effectuate the proposals set forth in the seventeen petitions.

A hearing on the application was held in Jefferson City on December 15, 1942, at which time all interested parties were given an opportunity to be heard, and the case was submitted on the record. The applicants were represented by their counsel, Barak T. Mattingly; St. Louis county by Erwin F. Vetter, County Counselor; and the Commission by Geo. B. Coleman and Charles T. M. Murphy. The city of University City waived notice of hearing by letter dated December 12, 1942. Signed by Marvin E. Boisseau, City Attorney, and the city of Lexington waived notice of hearing by a waiver filed December 14, 1942, and signed by R. L. Britt, Mayor, and D. W. Sherman, City Attorney.

Lexington is a Missouri public utility corporation with offices in Lexington, Missouri, owning and operating a water system serving customers in and about the city of Lexington.

Mott is a citizen of the city of Flint, Michigan, and is presently the sole stockholder of Lexington and of Old Company.

Old Company is a Missouri public utility corporation with offices at 6600 Delmar boulevard, University City, Missouri, owning and operating a water system serving customers in St. Louis county, Missouri.

Suburban is a Missouri corporation having its principal offices in University City, Missouri, created for the purpose of, among other things, acquiring, owning, and operating the property, rights and franchises of Old Company located in St. Louis county.

In considering the authorities sought in the application the petitions will be referred to in their order as previously stated.

Petition 1: Applicant's Exhibit A, the balance sheet of Lexington at October 31, 1942, shows a total capital liability of $100,000, represented by 1,000 shares of common capital stock, of $100 par value per share, authorized, issued, and outstanding. Pursuant to the provisions of § 5651, Rev Stats, Missouri, 1939, Lexington now proposes, in effectuating complete liq-

uidation, to transfer and convey to Mott all of its property, rights, and franchises, the control of which is vested in the common stock owned by Mott.

Petitions 2 and 3: Upon consummation of the proposal in Petition 1, Mott proposes to transfer and convey the property, rights, and franchises of Lexington to Old Company as a contribution to its capital surplus, and Old Company proposes to acquire such property, rights, and franchises, and to own and operate said properties.

This authority is sought pursuant to the provisions of §§ 5649 and 5651, Rev. Stats, Missouri, 1939.

[1, 2] *Petitions 4 and 5:* According to the application respecting these items, Mott proposes to contribute the sum of $8,085,000 to the Old Company and the latter proposes to accept this contribution and credit it to capital surplus.

The use of this sum in the liquidation of certain obligations of Old Company will be referred to presently.

The Commission is of the opinion that its permission is not requisite to the tender and acceptance of the contribution. However, in this proceeding the many components are closely related and interdependent, and cognizance is taken of the testimony (Transcript, page 25) of a witness for the applicant who stated that Mott, in the completion of the entire proposed plan, would receive compensation equivalent to and representing the purported contribution. Therefore, considering the case in its entirety, we prefer to identify the item of $8,085,000 as a temporary advance by Mott for which he will subsequently be reimbursed as particularized more fully hereinafter.

[3] *Petitions 6 and 7:* Old Company seeks authority herein to retire all of its outstanding cumulative preferred stock and first mortgage bonds. The issues involved comprise 18,200 shares $6 cumulative preferred stock, having no par value, callable upon any dividend date, after thirty days' notice, at $106 per share plus accrued and unpaid dividends, and two series of first mortgage bonds, one of $3,499,000 principal amount and designated "4 per cent series due 1955," redeemable at principal amount plus a premium of 3¾ per cent of principal amount and accrued interest, if redeemed prior to June 1, 1943, and the other of $969,000 principal amount and designated "3¼ per cent series due 1959," redeemable at principal amount plus a premium of 4¾ per cent of principal amount and accrued interest, if redeemed prior to June 1, 1943.

The Commission has previously authorized the issuance of the stock and bonds now proposed to be retired, and in granting such authority approved all provisions and conditions of issuance, including those relating to redemption. Therefore, we are of the opinion that Old Company is presently vested with the authority necessary to effect the proposed redemption and no further authority is required.

[4] *Petition 8:* Authority is sought by Suburban to issue 100,000 shares of common capital stock, of $10 par value each, total $1,000,000, which Mott proposes to acquire for cash at par.

Suburban has obtained the necessary authorization from the secretary of state, and the authority sought for

the actual issuance of the stock is properly before the Commission.

[5] *Petitions 9, 10, and 11:* The authorities sought herein are (9) by Mott to contribute to the capital surplus of Suburban the sum of $2,250,000 in cash, (10) by Suburban to accept such contribution, and (11) by Suburban to negotiate a short-term bank loan in the amount of $8,500,000.

The Commission is of the opinion that its permission is not required by the applicants to effect the foregoing proposals; however, the bank loan being a convenient method of quick financing, and to be subsequently funded with proceeds from long-term obligations, we will include authority for the issuance of the short-term bank loan herein.

Petition 12: Suburban proposes to acquire from Mott the 22,000 shares of outstanding common capital stock of Old Company for the sum of $11,724,000 in cash.

This is also an integral part of the entire plan and as such has the approval of the Commission. At this point we invite attention to the fact that this transaction is the means to repaying Mott for the temporary advance of $8,085,000, mentioned hereinbefore under Petitions 4 and 5, his investment in common stock of Old Company in the amount of $3,260,000, his investment in Lexington of $232,000 and his earnings by Old Company, amounting to $147,000, from the date of Mott's acquisition to the date of consummating the proposals herein.

Petitions 13 and 14: The authorities sought herein may be classified:

(1) by Old Company to transfer and convey to Suburban all of its water properties, rights, and franchises pertaining to its operations in St. Louis county and all of its net liabilities at the date of transfer with the exception of those assumed or incurred in the acquisition of Lexington and those representing promoters' advances for extensions, the liability for which will also be recorded in Suburban's books and guaranteed as to payment by agreement between Old Company and Suburban, Exhibit P.

(2) by Suburban to acquire the assets and to assume the net liabilities described in (1) above, giving in payment therefor 20,685 shares of the common capital stock of Old Company.

(3) by Old Company to accept in exchange for said water properties, rights and franchises, as described in (1) above, the 20,685 shares of its stock, as described in (2) above, and thereupon to cancel said 20,685 shares of its common capital stock and to cease doing business as a public utility in St. Louis county.

The foregoing proposals to transfer, acquire, and assume certain assets and liabilities are before us pursuant to the provisions of §§ 5649 and 5651, Rev Stats, Missouri, 1939.

Following the completion of the proposed transactions, Suburban will continue the operation of the water properties in St. Louis county and the Old Company will operate all of the water properties originally belonging to Lexington.

With respect to the item of promoters' advances in the amount of $719,242.34, at October 31, 1942, Old Company and Suburban covenant, in accordance with the terms of an agreement, identified as Exhibit P in this

case, that Suburban will liquidate all proper claims arising under contracts with said promoters with the understanding that Old Company will reimburse Suburban for any payments made in this respect.

Income may inure to Old Company by lapsation of the said Promoters' contracts and the parties agree that such income should revert to Suburban. Old Company agrees to transfer to Suburban the income which may arise by virtue of such lapsation.

We have already stated that Suburban guarantees the liability for the promoters' advances, and Suburban stipulates that it will not dispose of the 1,315 shares of the capital stock of the Old Company without securing permission of the Commission.

[6] The proposal of Suburban to relinquish, and of Old Company to receive and cancel, 20,685 shares of the common capital stock of the latter does not require the authority of the Commission.

[7] *Petitions 15 and 16:* Old Company and Suburban seek authority to change their names, respectively, to Missouri Water Company, sometimes hereinafter referred to as Missouri, and St. Louis County Water Company, sometimes hereinafter referred to as New Company.

Authority for a corporation to change its name is for the consideration of the secretary of state and is not within the province of the Commission. However, we observe that the proposed changes would result in corporations of the same name operating the water properties in St. Louis county prior and subsequent to the consummation of the entire plan. This proposal has many obvious advantages in the interest of practicality and feasibility, wherefore, we recommend that the proper authority be sought and proper evidence filed with the Commission that this has been done.

Petition No. 17: New Company proposes, after changing its name from Suburban, to issue and sell to Mott $7,000,000 principal amount of first mortgage 3¼ per cent bonds and $1,500,000 principal amount of unsecured 4½ per cent debentures, and to devote the proceeds from the sale thereof to the liquidation of the short-term bank loan, previously described, in the amount of $8,500,000.

The bonds will be designated as "first mortgage, 3¼ per cent, bonds, series A"; will be dated December 1, 1942, mature December 1, 1967, and bear interest at the rate of 3¼ per cent of principal amount per annum; and, together with subsequent issues, will be secured by the execution and delivery of an indenture of mortgage and deed of trust, in the form or substantially in the form as that identified as Exhibit Q in this case, to Mississippi Valley Trust Company, St. Louis, Missouri, as trustee.

The indenture of mortgage and deed of trust provides for the establishment of a trust fund requiring the annual deposit with the trustee of cash equivalent to ¾ of 1 per cent of the greatest aggregate principal amount of series A bonds at any time outstanding, it being further provided that the trust fund may be used to retire said series A bonds or to reimburse New Company for the cost of property additions not previously or subsequently made the basis of credit under said indenture of mortgage.

The indenture of mortgage further provides for the issuance of additional bonds in principal amounts not exceeding 62½ per cent of the cost or fair value of net additions to or betterments of property subsequent to the date of execution and delivery of the indenture of mortgage, providing that the net income of New Company, after deduction of all operating expenses, including depreciation and taxes (other than excess or other profits taxes, income taxes, and taxes refunded to security holders) is equal to at least two times the interest requirements of the outstanding and proposed bonds.

A further provision of the indenture of mortgage and deed of trust requires that, beginning January 1, 1943, a minimum of 13 per cent of New Company's gross operating revenues be expended or reserved for depreciation, maintenance, net additions, and betterments, property acquisitions, or the retirement of outstanding bonds.

The bonds will be subject to redemption as a whole at the option of New Company, or in part through the operation of the trust fund or the sale of property to public bodies, at the percentages of principal amount as set forth in the following table, plus accrued interest to the date of redemption:

If redeemed within the year ending on the following dates	Redemption price for special trust fund and proceeds of sales to public bodies	Redemption price for redemption as a whole at the option of the issuer
December 1, 1943	102.6%	105½%
December 1, 1944	102.6%	105½%
December 1, 1945	102.5%	105½%
December 1, 1946	102.4%	105%
December 1, 1947	102.4%	105%
December 1, 1948	102.3%	105%
December 1, 1949	102.2%	104½%
December 1, 1950	102.1%	104½%
December 1, 1951	102.0%	104½%
December 1, 1952	101.9%	104%
December 1, 1953	101.8%	104%
December 1, 1954	101.7%	104%
December 1, 1955	101.6%	104%
December 1, 1956	101.5%	103%
December 1, 1957	101.4%	103%
December 1, 1958	101.3%	103%
December 1, 1959	101.2%	103%
December 1, 1960	101.1%	102%
December 1, 1961	101.0%	102%
December 1, 1962	100.9%	102%
December 1, 1963	100.7%	101%
December 1, 1964	100.6%	101%
December 1, 1965	100.5%	101%
December 1, 1966	100.3%	100½%
December 1, 1967	100.2%	100½%

The debentures proposed to be issued in the principal amount of $1,500,000 will be dated December 1, 1942, mature December 1, 1962, and will bear interest at the rate of 4½ per cent per annum; and will be issued under a trust indenture to St. Louis Union Trust Company, trustee, in the form or substantially in the form as that identified as Exhibit R in this case. The trust indenture will contain a provision for the establishment of a sinking fund for the retirement of the debentures, said provision requiring

annual cash payments to the trustee of an amount sufficient to retire debentures of the principal amount of $35,000, plus 12½ per cent of the net income of New Company after deduction of operating expenses and interest, the former including depreciation and taxes.

The debentures will be subject to redemption as a whole, at the option of New Company, at a price of 105½ per cent of principal amount less ¼ of 1 per cent of said principal amount for each full year elapsed between December 1, 1942, and November 30, 1962. After the latter date the debentures are redeemable at principal amount.

The debentures will be redeemable in part, by moneys accruing to the sinking fund or in the event that all or a substantial part of the properties are sold to public bodies, at a redemption price of 104 per cent of principal amount less ¼ of 1 per cent of said principal amount for each full year elapsed between December 1, 1942, and November 30, 1958, after which latter date the debentures may be redeemed at principal amount. In the redemption of the debentures under any of the foregoing provisions there is to be included in the redemption price the accrued interest to the date of redemption.

. . . . . .

The organization and plans of New Company, primarily to acquire and to operate the property of Old Company, and to extend activities to other sections of Missouri, is marked by the creation of an open-end mortgage to obtain proceeds for extensions and improvements. Moreover, New Company is obtaining money at lower interest rates. On the other hand, Old Company neglected to protect its rights, to the extent of expenditures approximating $1,465,000, under the 5-year provision, § 5652, Rev Stats, Missouri, 1939, and consequently could not fund future requirements in St. Louis county and of course, would be unable to acquire water properties at other locations in Missouri as now proposed. In the consummation of the various proposals, the net current liability position of Old Company will be converted to a net current asset position of New Company.

Missouri will be controlled by New Company through stock ownership and will own and operate the property formerly owned and operated by Lexington. The pro forma balance sheet of Missouri, at October 31, 1942, Exhibit C, shows an investment in water properties at Independence, Missouri, to be subsequently acquired, authority for which is not sought at this time.

For ready reference, the amounts involved and the various transactions to effectuate the plan are tabulated as follows:

Investments by Mott:	
(1) For the acquisition of stock of Lexington and discharge of its obligations	$232,000
(2) For the acquisition of stock of Old Company	3,260,000
(3) Advanced to Old Company for liquidation of its bonds, note and preferred stock ...	8,085,000
(4) Earnings of Old Company from date of acquisition by Mott to date of consummation of plan (estimated) ...	147,000
Total Investment by Mott ...	$11,724,000
Cash Inuring to Suburban	
(1) From sale of stock	1,000,000
(2) From contribution to capital surplus	2,250,000
(3) From proceeds of short-term loan (subsequently funded by bonds and debentures)..	8,500,000
Total Receipts by Suburban..	$11,750,000

It will be noted that Suburban will obtain proceeds to carry out the program and have a cash balance of $26,000, which sum shall be reserved for additions and betterments.

The investments in plant recorded by Old Company, in the amount of $11,999,098.96, and by Lexington, in the amount of $424,904.54, will be transferred without change to the capital accounts of New Company and Missouri, respectively. The investment in plant recorded by New Company is sufficient to warrant authorization of the issuance of bonds and debentures in the total par amount of $8,500,000. Likewise, the balances in the depreciation reserve accounts of the former companies will be transferred to the books of the new companies, and they will continue to make accruals at the same rates as previously obtained.

The creation of New Company will result in an estimated saving of $80,000 in income taxes by reason of being permitted to use the actual cost of properties in tax computations.

New Company intends to dispose of the entire issues of bonds and debentures to Mott for cash at par, aggregating $8,500,000. A witness for the applicant testified that, in view of comprehensive experience in dealing with public utility securities, the disposition of the issues at par would render to New Company proceeds consistent with those received from the sale of similar issues.

From the evidence before us we are of the opinion that par closely approximates the value of the securities proposed to be issued.

Then, too, the pro forma income statement of New Company for the year ended October 31, 1942, Exhibit H, shows earnings available for interest and Federal income and excess profits taxes of approximately $760,000, or almost three times the annual bond interest requirements.

Subsequent to the date of the hearing, counsel for applicants filed a statement showing the details of the corporate, financial, auditing, and legal expenses incurred, or to be incurred, by New Company in consummating the plan. These expenses amount to $41,197.50, including $15,000 estimated legal fees. This expenditure is reasonable and our interest is that proper distribution of the sum is made in the accounts of New Company. Those expenses incurred in putting New Company in readiness to do business, in the amount of $4,597.27 are organization costs, and will be capitalized. The remaining expenses in the amount of $36,600.23 represent the cost of financing and are not properly chargeable to capital account or to operating expenses, and, therefore, will be amortized out of income over the lives of the issues to which they pertain.

Throughout this report and order, reference has been made to the date of consummation of the plan. With respect to the proposals requiring an effective date, we are of the opinion that it shall be determined to be December 15, 1942.

Two of the applicants herein propose to change their names to New Company and Missouri, but had not been granted authority to do so by the secretary of state at the date of the hearing. Therefore any authority granted herein to New Company and Missouri is contingent upon their se-

curing proper authority to adopt such names.

The Commission is of the opinion that the money and property to be procured or paid for by the issuance of the bonds, debentures, and stock mentioned in this order is reasonably required for the purposes specified in this order and such purposes are not in whole or in part reasonably chargeable to operating expense or to income.

After careful consideration of all the evidence in this case the Commission is of the opinion and finds that consummation of the plant is in the interest of the public as well as that of the owners of and investors in the properties. With the exception of those petitions for which our authority is not required and the modifications and stipulations set forth hereinbefore, the petitions of the applicants will be granted.

It is, therefore,

Ordered: 1. That Lexington be and is hereby authorized to transfer and convey to Mott, all of its properties, rights, and franchises and all other assets and liabilities.

Ordered: 2. That Mott be and is hereby authorized to transfer and convey all of the properties, rights, and franchises and other assets referred to in *Ordered* 1 to Old Company and it shall assume all liabilities.

Ordered: 3. That Old Company be and is hereby authorized to acquire the properties, rights, and franchises and other assets and assume all liabilities referred to in *Ordered* 1 and 2; it is *further ordered* that Old Company be and is hereby authorized to own and operate the said properties; and it is *further ordered* that upon such acquisition, Old Company, or Missouri, shall immediately file with the Commission a schedule of rates for water service.

Ordered: 4. That Suburban be and is hereby authorized to issue and sell to Mott, its common capital stock consisting of 100,000 shares, of the par value of $10 each, for cash at the total par value of $1,000,000.

Ordered: 5. That Suburban be and is hereby authorized to obtain a short-term bank loan in the amount of $8,500,000.

Ordered: 6. That Suburban, upon receipt of $11,750,000 in cash from the proceeds of the sale of its common capital stock, by a contribution to its capital surplus and of the short-term loan, shall use such proceeds to the extent of $11,724,000 for the reimbursement of Mott, all as particularized hereinbefore; and that the funds, in the amount of $26,000 remaining in the treasury after such reimbursement shall be set aside and used only for the purpose of making additions to or acquisitions of property.

Ordered: 7. That Old Company be and is hereby authorized to transfer and convey to Suburban, all of its water properties, rights, and franchises, pertaining to its operation in St. Louis county, and all other assets; and Suburban shall assume all liabilities with the exception of those acquired or incurred in the acquisition of Lexington and those liabilities representing promoters' advances guaranteed by Suburban in accordance with the provisions of the agreement filed in this case. That Suburban be and is hereby authorized to own and operate the said water properties in St. Louis county. That upon such acquisition, Suburban

shall immediately file with the Commission a schedule of rates for water service. That in payment for the properties, rights, and franchises herein designated, Suburban shall transfer to Old Company, 20,685 shares of the common capital stock of the latter, and Old Company shall thereupon cancel said 20,685 shares of its common capital stock and cease doing business as a public utility in St. Louis county. That the net assets and liabilities of Old Company herein authorized to be transferred, shall be recorded in the books of Suburban.

Ordered: 8. That New Company and Missouri shall not be deemed to have been granted any authority herein until they obtain the necessary authority to use respectively the names "St. Louis County Water Company" and "Missouri Water Company"; and upon obtaining such authority to adopt their names shall file with this Commission certified copies of such authority.

Ordered: 9. That New Company be and is hereby authorized to issue and sell to Mott, at par, its first mortgage 3¼ per cent bonds in the principal amount of $7,000,000, and its 4½ per cent sinking fund debentures in the principal amount of $1,500,000.

Said bonds will be designated "first mortgage 3¼ per cent bonds, series A"; will be dated December 1, 1942, mature December 1, 1967, and bear interest at the rate of 3¼ per cent of principal amount per annum; and, together with subsequent issues, will be secured by the execution and delivery of an indenture of mortgage and deed of trust, dated December 1, 1942, and in the form or substantially in the form as that filed in this case, to Mississippi Valley Trust Company, St. Louis, Missouri, as trustee.

Said debentures will be designated, "4½ per cent sinking-fund debentures"; will be dated December 1, 1942, mature December 1, 1962, and bear interest at the rate of 4½ per cent per annum; will be issued under a trust indenture, dated December 1, 1942, and in the form or substantially in the form as that filed in this case, to St. Louis Union Trust Company, trustee. The proceeds from the sale of the bonds and debentures, herein authorized to be issued, shall be used for the liquidation of the short-term bank loan of Suburban in the amount of $8,500,000, and for no other purposes.

Ordered: 10. That New Company and Missouri record, in the Plant and Depreciation Reserve Accounts, the balances therein in the accounts of Old Company and Lexington, with respect to the properties transferred; and that New Company and Missouri shall accrue depreciation at the same rates as used by the predecessors.

Ordered: 11. That New Company shall dispose of the estimated expenses in this case, amounting to $41,197.50, by capitalizing the sum of $4,597.27 and amortizing to other income, over the lives of the related issues, the sum of $36,600.23.

Ordered: 12. That the effective date of the proposals herein be December 15, 1942.

Ordered: 13. That all authorities granted herein to New Company and Missouri shall not become effective until the said companies are granted authority by the secretary of state to adopt said names.

Ordered: 14. That nothing herein

shall be considered as a finding by the Commission of the value of the properties for rate-making purposes nor as an acquiescence in the value placed thereon by the parties.

Ordered: 15. That all of the authorities granted herein shall be exercised within six months from the date hereof.

Ordered: 16. That the parties shall keep true, separate, and accurate accounts, showing the consummation of all proposals herein authorized, and on or before six months from the date hereof, shall make a verified report to the Commission stating the consummation of said proposals and the considerations involved in consummating the purposes stated in this report and order.

Ordered: 17. That this order shall take effect on the 24th day of December, 1942, and that the secretary of the Commission shall forthwith serve a certified copy of this order upon all interested parties.

Stueck, Chairman, Ferguson, Van Osdol, Williams, and Henson, Commissioners, concur.

INDIANA SUPREME COURT

Terre Haute Gas Corporation et al.

v.

Lenore H. Johnson et al.

[No. 27736.]

(— Ind —, 45 NE (2d) 484.)

Appeal and review, § 80 — Parties — Commission orders.

1. A party attacking a Commission order must show that he has sustained or is in imminent danger of sustaining a direct injury as a result of the order, and it is not sufficient that he has merely a general interest common to all members of the public, p. 117.

Appeal and review, § 80 — Parties — Rate orders.

2. Consumers of gas may bring an action to set aside an allegedly void Commission order, where the order promulgated rates to be charged by the gas company involved, p. 117.

Appeal and review, § 25 — Appearance of witnesses — Conclusiveness of trial court action.

3. Where a defendant utility company filed an unverified motion objecting to the appearance of the plaintiff's attorney in an action to set aside a Commission order because of his prior relation as attorney for the company, the appellate court must assume that the trial court properly overruled the motion, the attorney having filed a sworn answer denying the charge, p. 118.

Evidence, § 30 — Transcript of testimony from earlier case — Similarity of issues involved.

4. A transcript of testimony given at an earlier hearing before the Commission for a reduction of gas rates was properly admitted in evidence in an action to set aside a Commission order approving the sale of the gas company's properties to another company and promulgating rates to be charged by the purchaser, p. 119.

Appeal and review, § 56 — Grounds for reversal — Admission of incompetent evidence — Absence of injury.

5. Judgments will not be reversed on account of the admission of incompetent evidence not shown to have been harmful, p. 120.

Commissions, § 47 — Action as a body — Meetings.

6. Orders approving the sale of utility properties and promulgating rates to be charged by the purchaser are void where they were signed by two members of the Commission in the absence of the third member, who had no notice of or opportunity to attend any meeting relating to the matter involved, notwithstanding a statutory provision that a majority of the Commission would constitute a quorum, p. 120.

Appeal and review, § 68 — Action by appellate court — Reversion to status quo.

7. Utility companies acted at their peril in consummating the proposed sale of one of the company's properties to the other after commencement of an action to set aside the transaction on the ground that the Commission orders approving it were void, since they were bound to know that the judgment might relate to the time when the action was started, and the trial court, upon determining that the orders were void, could direct reconveyance of the property, p. 123.

[December 30, 1942.]

APPEAL *from judgment setting aside order approving sale of utility property and promulgating rates applicable to purchaser; affirmed.*

APPEARANCES: Baker, Daniels, Wallace & Seagle, of Indianapolis, Rawley & Stewart, of Brazil, Cooper, Royse, Gambill & Crawford, of Terre Haute, and Davis, Baltzell & Sparks, of Indianapolis (Paul Y. Davis and William G. Davis, both of Indianapolis, Gilbert Gambill and Samuel D. Royse, both of Terre Haute, and Robert B. Stewart, of Brazil, of counsel), for appellants Terre Haute Gas Corporation and Indiana Gas Utilities Co.; George N. Beamer, Attorney General, and Urban C. Stover, Deputy Attorney General, for appellant Public Service Commission of Indiana; Frank Hamilton and Beasley, O'Brien, Lewis & Beasley, all of Terre Haute, for appellees.

SHAKE, J.: The appellant, Terre Haute Gas Corporation, is a manufacturer of artificial gas and the appellant, Indiana Gas Utilities Company, is a public utility engaged in selling and distributing gas in the city of Terre Haute and in surrounding communities. The Utilities Company gave the Gas Corporation an option to purchase its physical assets, franchises,

and permits on or before December 31, 1940. On November 20, 1940, the corporations filed separate petitions with the Public Service Commission of Indiana for the approval of said proposed purchase and sale. The Commission held a hearing on said petitions and on December 31, 1940, two of its three members entered purported orders approving said transaction and establishing a schedule of rates to be applicable to said Gas Corporation upon the consummation of said sale. The appellee, Lenore H. Johnson, thereupon, brought a suit in the Vigo circuit court to set aside the purported orders of the Public Service Commission and to enjoin the Utilities Company from selling and the Gas Corporation from purchasing said property. Subsequently, the trial court permitted the appellee, Charles J. Kolsem, to intervene as a party plaintiff. The action was venued to the Clay circuit court, where there was a trial and a finding to the effect that the orders of the Public Service Commission were void and that the Gas Corporation and the Utilities Company should be permanently enjoined from acting thereunder. Motions for a new trial were filed by the appellant corporations and by the Public Service Commission. Upon the denial of a new trial the appellants filed motions in arrest and to modify the judgment, which were likewise overruled. This appeal followed.

The propositions duly presented and relied upon by the appellants are: (1) that neither of the appellees had any such interest in the subject matter as entitled him to maintain the action; (2) that it was error to permit John H. Beasley to appear in the court below as counsel for the appellees; (3) that it was error to admit in evidence a transcript of the testimony given at the hearing before the Public Service Commission and to permit a member of the Commission to relate a conversation he had with the mayor of Terre Haute and to relate a telephone conversation which he overheard between another member and a New York attorney; (4) that there was no evidence that the orders of the Public Service Commission were unreasonable, unlawful, or the result of fraud; and (5) that it was error to refuse to modify the judgment so that it would merely set aside the orders of the Public Service Commission and remand the case to that body. The appellants' propositions will be considered in the order stated.

[1, 2] By way of separate demurrers to the amended complaint of the appellee Johnson and to the intervening complaint of the appellee Kolsem the appellants challenged the sufficiency of these pleadings to show that said appellees had any such interest in the subject of the litigation as authorized them to maintain their actions. A motion for a judgment on the pleadings raised the same issue, and the sufficiency of the evidence to establish the fact of a proper interest in the appellees was presented by motions for a new trial. The appellees rely on Acts 1929, chap 169, §§ 1 and 2, § 54-429, Burns' 1933, § 13982, Baldwin's 1934, and § 54-430, Burns' 1933, § 13983, Baldwin's 1934. These provisions authorize actions to vacate, set aside, or enjoin orders of the Public Service Commission on the ground that they are unreasonable or unlawful or were procured by fraud. Such an action must be commenced within six-

ty days after entry of the order complained of and must be prosecuted by a person adversely affected thereby. Without undertaking an academic definition, it seems sufficient to say that the phrase "adversely affected" conveys the same meaning as the common-law rule which would be applicable in the absence of the statute. Generally, to enable a private individual to invoke the judicial power to determine the validity of an administrative order, he must show that he has sustained or is in immediate danger of sustaining a direct injury as a result of the order, and it is not sufficient that he has merely a general interest common to all members of the public. Ex parte Levitt (1937) 302 US 633, 82 L ed 493, 58 S Ct 1; People's Gas Co. v. Tyner (1892) 131 Ind 277, 31 NE 59, 16 LRA 443, 31 Am St Rep 433; 39 Am Jur Parties, § 11. This rule supplies the standard by which the sufficiency of the complaints and of the evidence to disclose a right to maintain the action must be determined.

The amended complaint of the appellee Johnson alleged that she was the owner of an undivided interest in certain real estate on which was situated a dwelling house which was supplied with gas for cooking and heating by the appellant Utilities Company; that she resided with her husband in another dwelling house which was likewise served by said appellant; and that she was a user and consumer of gas furnished and distributed by said Utilities Company, by reason of which she was adversely affected by the purported orders of the Public Service Commission. The evidence relating to this issue disclosed that the real estate first referred to was occupied by a tenant who used gas for cooking and that the gas supplied to the house where the said appellee lived was paid for by her with money furnished by her husband. It was alleged in the intervening complaint of the appellee Kolsem that he occupied and maintained a residence in Terre Haute which was heated with gas supplied by the Utilities Company. His testimony supported the allegation.

Public utilities enjoy monopolies and they are privileged to exact rates established by agencies set up by law. Consumers of the products of such utilities have the undoubted right to assert that they are adversely affected by rates so promulgated. The fact that the orders of the Public Service Commission embraced service rates was a sufficient basis for the appellees' right to a judicial review. It is no answer to say that the order relating to rates may not be reviewed because it required a reduction. The appellees may have believed that the reduced rates were exorbitant. As a matter of pleading and of proof the appellees showed such an interest in the subject matter as authorized them to institute their actions.

[3] The appellant Utilities Company filed an unverified motion to prohibit John H. Beasley from appearing as an attorney for the appellees in the court below. The motion charged that Mr. Beasley had represented said appellant generally, both prior and subsequent to the hearing before the Public Service Commission on the application for authority to sell the utility's property, and that said attorney had obtained copies of certain franchises and permits for the use of said appellant at said hearing. To this charge

Mr. Beasley filed a long answer under oath in which he detailed his prior associations and connections with said appellant and he asserted that his relationship as attorney for the Utilities Company had completely terminated long before the present controversy had its inception. He specifically denied that he had ever been employed by either of the appellants in connection with the subject matter of this litigation. The proper standard of conduct under the circumstances is well stated in the Sixth Canon of Professional Ethics of the American Bar Association as follows: "The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed."

We must assume, however, that the ruling of the trial court was correct on the issue formed on the unverified charge against the attorney and his sworn answer denying the same.

"Good practice in all cases requires that where a motion is founded upon matters not within the judicial knowledge of the court, there should be an affidavit as to the existence of the facts upon which it is based, showing their materiality and the necessity for invoking the aid of the court with reference thereto." McDonel v. State (1883) 90 Ind 320, 322.

Relying solely upon Levi v. State (1914) 182 Ind 188, 104 NE 765, 105 NE 898, Ann Cas 1917A 654, the appellants say that it was error to admit in evidence a transcript of the testimony received by the Public Service Commission at a hearing on applications for a reduction of the rates charged by the Utilities Company. The Levi Case was a criminal prosecution in which the state offered the testimony of an absent witness given at a former trial of the cause. The evidence was admitted without a showing that the witness was unavailable and this was held to be error. We find nothing helpful in that case so far as the question here presented is concerned.

[**4**] It appears from the record that within a month prior to the filing of the petitions with the Public Service Commission for an authorization of the sale of the property of the Utilities Company to the Gas Corporation, which resulted in the order here complained of, said Commission had conducted a hearing on a number of previous petitions for a reduction of the rates charged by the Utilities Company. The transcript received in evidence over the appellants' objections was a record of the testimony heard by the Commission on said previous petitions. That part of the order of the Commission entered on December 31, 1940, relating to rates may be regarded as a determination of these petitions. So considered, we are called upon to determine whether it was proper to receive in evidence a transcript of the testimony heard by the Commission at the rate hearing.

In Warren v. Indiana Teleph. Co. (1940) 217 Ind 93, 118, 26 NE(2d) 399, 409, this court had occasion to say: "In the final analysis, the finding of an administrative agency will not be disturbed when it is subjected to the scrutiny of a judicial review, upon the claim that it is not supported by the

evidence, unless it is made to appear that the finding does not rest upon a substantial factual foundation. This may be determined from a reëxamination of the evidence upon which the administrative agency acted, or by the original reviewing court hearing evidence, depending upon the legislative scheme under which the agency operates."

A statute relating to the Public Service Commission discloses that it is made the duty of that body when an action for review has been instituted to "forthwith cause to be made a complete transcript of all the pleadings, evidence, and entries filed, introduced, and made with, before, and by the Public Service Commission in the proceeding complained of in such action, and such transcript shall be received in evidence in such action, when offered by any party thereto." Acts 1929, Chap 169, § 5, § 54-433, Burns' 1933, § 13986, Baldwin's 1934. We must conclude that there was no error in admitting the transcript in evidence.

[5] The only complaint made by the appellants regarding the admission of testimony detailing a conversation between a member of the Public Service Commission and the mayor of Terre Haute and of another with a New York attorney is that these did not relate to any matter in issue and constituted hearsay evidence. There is no claim that the appellants' substantial rights were affected by the admission of this testimony. Judgments will not be reversed on account of the admission of incompetent evidence not shown to have been harmful. § 2-1071, Burns' 1933, § 175, Baldwin's 1934. Romona Oölitic Stone Co. v. Weaver (1912) 49 Ind App 368, 97 NE 441.

[6] A consideration of the sufficiency of the evidence to support the finding may be reduced to a very narrow inquiry. It is said in the appellants' brief that "any support for the court's conclusion that the orders should be set aside must be based entirely upon what we believe to be a wholly erroneous proposition of law, namely, that because Commissioner Stuckey received no notice of the meeting of the Commission at which the orders were approved, the orders are not, in effect, the orders of the Commission." The appellees assert in their brief that "The thing which rendered the purported order void, was that it was not made and entered at any meeting of the (Public Service) Commission of which all the Commissioners had notice and opportunity to attend." These quotations constitute a correct statement of the principal issue in this case, and there is no substantial dispute in the evidence as it relates to this subject. The orders here under attack were signed by two members only The third member was not present and had no notice of or opportunity to attend any meeting of the Commission at which the orders were considered or signed.

The Public Service Commission of Indiana consists of three members. § 54-102, Burns' 1933, § 13907, Baldwin's 1934. "A majority of said Commission shall constitute a quorum, but on order of the Commission any one (1) member of said Commission may conduct a hearing, or investigation and take the evidence therein, and report the same to the Commission for its consideration and action." § 54-

103, Burns' 1933, § 13908, Baldwin's 1934. The Commission has authority to formulate necessary rules as to the performance of its duties (§ 54-103, Burns' 1933, § 13908, Baldwin's 1934) but no showing has been made as to the existence of any pertinent rule. The law does not specifically provide for formal meetings of the members of the Commission for any purpose other than to organize immediately following their appointment. Section 1-201, Burns' 1933, § 5, Baldwin's 1934, provides:

"The construction of all statutes of this state shall be by the following rules, unless such construction be plainly repugnant to the intent of the legislature or of the context of the same statute: . . .

"Second. Words importing joint authority to three or more persons shall be construed as authority to a majority of such persons, unless otherwise declared in the law giving such authority."

It appears to be a fundamental rule of parliamentary practice governing assemblies that the opportunity to deliberate, and if possible, to convince their fellows is the right of the minority, of which they cannot be deprived by the arbitrary will of the majority. Com. ex rel. Claghorn v. Cullen (1850) 13 Pa 133, 53 Am Dec 450. Thus, it has been held that the powers of a municipal council must be exercised at a meeting which is legally called; that action of all the members of the council separately is not the action of the council; and that an agreement entered into separately by the members of the council outside a meeting is not binding. Tulsa v. Melton (1936) 175 Okla 581, 54 P(2d) 159, 37 Am Jur Municipal Corporations, § 54. Likewise, a county board may not act without notice to all of its members. Laconia v. Belknap County (1934) 86 NH 565, 172 Atl 245; 20 CJS Counties, § 87. This principle was fully considered by the supreme court of Kansas in the case of Paola & Fall River R. Co. v. Anderson County Commissioners (1876) 16 Kan 302, 309, in an able opinion by Justice Brewer, who afterwards graced the bench of the Supreme Court of the United States. We quote from the opinion: "Nor is this merely an arbitrary rule, but one founded upon the clearest dictates of reason. Wherever a matter calls for the exercise of deliberation and judgment, it is right that all parties and interests to be affected by the result should have the benefit of the counsel and judgment of all the persons to whom has been intrusted the decision. It may be that all will not concur in the conclusion; but the information and counsel of each may well affect and modify the final judgment of the body. Were the rule otherwise, it might often happen that the very one whose judgment should and would carry the most weight, either by reason of his greater knowledge and experience concerning the special matter, by his riper wisdom and better judgment, or by his greater familiarity with the wishes and necessities of those specially to be affected, or from any other reason, and who was both able and willing to attend, is through lack of notice an absentee. All the benefit, in short, which can flow from the mutual consultation, the experience and knowledge, the wisdom and judgment of each and all the members, is endangered by any other

rule. Again, any other rule would be fraught with danger to the rights of even a majority, as, when legally convened the ordinary rule in the absence of special restrictions being that a quorum can act and a majority of the quorum bind the body, it would, but for this rule, often be in the power of an unscrupulous minority to bind both the body and the corporation for which it acts to measures which neither approve of."

In State ex rel. Lemke v. Union Light, Heat & P. Co. 47 ND 402, 410, 411, PUR1921D 662, 669, 182 NW 539, 542, the rule stated above was held applicable to the Board of Railroad Commissioners of that state, a body in many respects comparable to our Public Service Commission. After quoting from the opinion of Justice Brewer, the court said: "When we consider that the Board of Railroad Commissioners consists of members, each of whom is elected at large, supposedly on the basis of his qualifications for the duties imposed, and that the Board is intrusted with an extensive authority, legislative in character, to determine rates at which public service corporations must serve the public and the public pay for such service, the requirement that its determinations shall only be made after opportunity is afforded to every member to bring to bear upon his associates his counsel, opinion, and judgment upon all matters entering into the decision is most reasonable and salutary. This safeguard operates for the protection of both parties to a controversy, and cannot properly be disregarded in arriving at the validity of action of such general importance and affecting so many persons. If orders issued or decisions rendered by two of a board of three members are allowed to stand where no opportunity to participate in the steps leading up to the decision is afforded to the third member, the latter could be rendered entirely useless, and the public be effectually deprived of the service of one in whose judgment upon such matters it had expressed confidence."

The undisputed evidence in this case discloses that on December 31, 1940, the Honorable Perry McCart, Chairman of the Public Service Commission, was confined to an Indianapolis hospital by illness. On the afternoon of that day he was visited by Commissioner Cook, at which time and place the purported orders were agreed upon. Commissioner Stuckey did not attend this meeting, had no notice thereof, and did not learn of the orders until January 2nd. There is no showing that the subject of the orders had been previously considered at any meeting of the Commission at which Commissioner Stuckey was present or of which he had notice.

The appellants rely heavily upon Sunshine Bus Lines v. Railroad Commission (Tex Civ App 1941) 39 PUR (NS) 27, 149 SW(2d) 228. On the facts, that case is very similar to the one at bar. The Texas Railroad Commission consists of three members of which two constitute a quorum. The statute under which the Commission operates does not provide for stated sessions or notice to the members of proposed meetings. The court there held that an order agreed upon by two members without the knowledge of the third was binding and valid. No notice was taken of the principles heretofore discussed and the court of ap-

peals reached the conclusion that the independent action of the majority of the members was sufficient. The decision seems to place undue significance upon the statutory provision relative to a quorum. As we view it, the matter of a quorum is one separate and apart from the principle that all the members of a deliberative body must have a fair opportunity to participate in its action. This does not mean that a single member may by absenting himself prevent action by a quorum. The Commission has ample authority to adopt rules and regulations respecting the conduct of its business. It would be a simple matter to promulgate a rule fixing a time and place for regular meetings of the Commission. All the members would be required to take notice of such a rule and if one should for any reason fail to attend a meeting so-called he would be in no position to object on the ground that the majority had acted without his knowledge or consent.

[7] The appellants' last proposition is that the trial court erred in overruling their motion to modify the judgment. The record discloses that the judgment declared the orders of the Commission void and the appellants concede that this was proper if there was no reversible error in the proceedings. The judgment went further, however, and directed the appellant Gas Corporation to reconvey to the Utilities Company all properties attempted to be sold under and by virtue of said void orders and directed generally that the status of said appellants with respect to the property in controversy should be restored as of the time of the commencement of the action. The part of the judgment complained of was, no doubt, the result of the showing made at the trial that the appellants Gas Corporation and Utilities Company had consummated the proposed purchase and sale of the property after the commencement of this action. Such being the case, said appellants acted at their peril since they were bound to know that the judgment might relate to the time when the action was begun. In Holden v. Alton (1899) 179 Ill 318, 325, 53 NE 556, 557, 558, the supreme court of Illinois had before it the question of the proper relief in an action to enjoin permanently an unlawful contract for public printing where no restraining order or temporary injunction was sought. Mr. Justice Cartwright, speaking for the court, said: "Counsel for appellees says that the contract has been performed, and the money paid, and that the court should disregard the injury done to the taxpayer, for the reason that it has been fully accomplished. The record does not show that the fact stated is true, but, if it is, the action was taken after the filing of the bill, and when the court had acquired jurisdiction to prevent the wrong. No action, under such circumstances, can affect the power of the court to grant the relief prayed for and to compel restitution. There was no injunction pendente lite, and the defendants would not be liable for contempt for violating an order of the court, but, if a defendant acts in such a case, it is at the risk of being compelled to restore the condition existing when the court acquired jurisdiction."

Since the orders of the Commission are void, the case stands as if none had

been entered in so far as that body is concerned. The Commission ought to be free to enter any lawful order that it may deem just and proper and its conduct in that regard ought not to be influenced by the steps taken by the appellants after the validity of the orders entered on December 31, 1940, became the subject of an action for judicial review. In other words, the trial court had full power to restore the status quo and such we understand to be the effect of the decree.

We have carefully considered all of the evidence in the voluminous record. Much of it relates to the issue of fraud of which there was no proof or finding; to the relations existing between the members of the Public Service Commission, which is no concern of ours; and to the question as to whether the interests of the people of Terre Haute would be better served by having natural gas rather than artificial gas made available to them, which likewise is not for us to determine.

For the reasons stated, the judgment is affirmed.

GEORGIA PUBLIC SERVICE COMMISSION

Federal Public Housing Authority of Savannah

v.

Savannah Electric & Power Company

[File No. 19384, Non-Docket.]

Service, § 188 — Extension — Contribution to cost — Federal Housing Authority.

An electric company should immediately construct a line and facilities necessary to provide service to a Federal housing project without a payment by the applicant Federal Housing Authority, to cover the cost of construction, as is normally required under the regulations approved for the company, in view of the established practice and policy of the authority not to make any advance to a privately owned utility in connection with such construction, but this should be on the express condition that the extension will be made and service accepted subject to the final order of the Commission following a more complete study of the problem as to the cost, revenue, security of the investment, and ultimate effect upon customers in event of an early termination of service contracts.

[February 3, 1943.]

APPLICATION *of Federal Housing Authority for construction of electric extension to housing project; extension ordered subject to conditions.*

By the COMMISSION: At the request of the complainant, the Federal Housing Authority, an informal conference was held between the Authority and the Savannah Electric and Power Company, in the office of the Commission on February 2, 1943, at which time the said Authority was represented by Major Joel Mallett and L. A. Pradell, and the company by J. J. Bouhan, C. H. Schwaner and James Averitt.

It was brought out at the conference that service to three separate Federal projects was involved, two of which were located in the same area at Port Wentworth, and the third in the vicinity of the Southeastern Shipyards, and that the cost to the Savannah Electric and Power Company for the construction of the lines and facilities to reach the three projects will entail a capital outlay of approximately $6,000, which the company proposes should be advanced by the aforesaid Authority on the basis of the regulations of this Commission now applicable to such extensions of facilities. In accordance therewith the company would refund to the Authority the advance made for such extensions on the basis of 10 per cent of the monthly bill until such advance is fully refunded or repaid.

While there was considerable controversy between the conferees as to the estimated consumption and revenue to be derived from the housing projects, the Authority's estimate being $16,000 per annum against the company's estimate of $12,000 per annum, as well as to other collateral facts, such as the permanency of the projects, contribution in connection with the construction of gas facilities to one of said projects, and other questions; no questions were raised as to the correctness of the company's estimate with respect to the sum necessary to construct the proposed lines, the objection made being to the advancing of the necessary sum to finance the construction, which it was stated was contrary to the established practice and policy of the Federal Housing Authority to make any advance to a privately owned utility in connection with the construction of a Federal housing project.

This policy runs counter to the well-established practice of this Commission which is to require that advances be made for the construction of facilities that are to be used to provide service of a temporary or uncertain character in order to afford proper protection to the ratepayers against such undue risk. It developed further, notwithstanding the fact that negotiations have been under way since early in November, that we have now come to a time when these badly needed housing units in a war-congested area are ready for occupancy, except for the availability of electric service.

Therefore, the Commission will direct, in order to avoid further delay, that said service be established and this will at the same time afford the Commission's staff further opportunity to develop such a plan as may be more acceptable to the Authority, and which would at the same time hold safe and preserve the investments and contractual agreements that the company has heretofore made under the approved regulation of the Commission, requiring that advances made for such construction be refunded on the basis above outlined.

The Commission, therefore, orders the immediate construction of the line and facilities necessary to provide electric service at the Bonny Bridge subdivision, on the express condition that the extension will be made by the company and service accepted by the Authority, subject to the final order of this Commission which final order will apply to the service herein ordered to be established, as well as the extensions to be made hereafter to the other two projects. Whereupon, it is

Ordered: That the company proceed without delay and provide the service required to serve Project No. 9048, which is a 400 unit housing project, known as the Bonny Bridge subdivision at Port Wentworth, Georgia.

Ordered further: That the line extension and installation of electric facilities required, as set out above, be made without a payment by the applicant, the Federal Housing Authority, to cover the cost of said construction, as is normally required under the regulations approved for this company, but the Commission expressly reserves jurisdiction over the subject matter involved, for the purpose of entering such final order, as the Commission may find to be necessary and proper, after full and careful consideration of such facts as may be presented later by the Commission's engineers, following a more complete study of the problem as to, the cost to the company, revenue to be received, security of the investment, and ultimate effect upon the customers of said company, in event of an early termination of such contracts.

ARKANSAS SUPREME COURT

E. L. Santee, Doing Business as National Bus Line

v.

Arkansas Corporation Commission

(No. 4-6900.)

(— Ark —, 166 SW(2d) 672.)

Certificates of convenience and necessity, § 149 — Revocation for noncompliance — Period of grace.

A certificated motor carrier claiming a 30-day period within which to comply with a Commission order before cancellation of the certificate for noncompliance therewith has the burden of showing that he had in good faith begun operating within the time allotted by the Commission or within a reasonable time thereafter.

[December 14, 1942.]

APPEAL *from judgment affirming Commission order revoking a certificate; affirmed.*

APPEARANCES: Willis V. Lewis and Ed E. Ashbaugh, both of Little Rock, for appellant; Louis Tarlowski, of Little Rock, for appellee.

HOLT, J.: This appeal challenges the judgment of the Pulaski circuit court, second division, affirming an order of the Arkansas Corporation Commission of May 8, 1942, wherein there was canceled a certain certificate of public convenience and necessity authorizing appellant to operate a motor transportation system over U. S. Highway 70 from Hazen to the junction of Highway 11, and from the junction of Highways 11 and 70 to Stuttgart, and thence over Highways 152 and 1 to St. Charles, Arkansas.

The certificate in question was issued on November 5, 1941, and required operations thereunder to begin within thirty days from date of issuance. November 26, 1941, on appellant's petition, he was granted an extension of forty-five days, or until January 10, 1942, within which to begin operations under his permit.

The record shows that no operations were conducted under this permit from the date of its issuance, November 5, 1941, to and including April 1, 1942.

April 20, 1942, the Commission notified appellant that on May 8, 1942, he would be required to show cause why his permit should not be canceled for failure to operate. Pursuant to this notice, a hearing was had on May 13, and upon the evidence presented, the Commission entered an order canceling appellant's permit. On appeal to the Pulaski circuit court the Commission's order was affirmed and appellant ordered to cease and desist from operating over the highways involved, and, as has been noted, this appeal followed.

Appellant's contention for a reversal is stated in his brief in this language: "The ruling of the Commission and the lower court is contrary to the evidence and the law in the case and that both the court and the Commission exceeded its jurisdiction."

More specifically, appellant argues that he was operating over the highways in question under his permit granted by the Commission, and, therefore, under § 14, division (a) of Act 367 of the Acts of 1941, it was the duty of the Commission, before canceling his permit, to give him thirty days within which to comply with the Commission's orders, and that this the Commission had failed to do.

There is no dispute that the permit issued to appellant contained a provision that operations thereunder should begin within thirty days from date of issuance (November 5, 1941), and that on November 26, 1941, appellant applied for and was given a 45-day extension, which expired on January 10, 1942. It is also undisputed that appellant conducted no operations, under his permit, from January 10 to April 1, 1942. Appellant testified that on the last date he leased a bus with driver from another transportation line and began operations. As to the nature of this attempted operation, the record reflects that from April 1st to April 30th, inclusive, only ten tickets totaling $3.60, were sold from Stuttgart to Hazen. There is no evidence that tickets were ever sold from Hazen to Stuttgart. Appellant at no time operated on the other routes specified

in his permit. While he testified that cash fares were collected along the route between Hazen and Stuttgart, he admitted that no record of these fares was kept, and he had no idea of the amount. Of the ten tickets sold two were sold between April 1st and April 7th, none between April 7th and April 21st, and six between April 21st and April 30th. Appellant testified that he did not begin operations sooner for the reason that he could not procure busses. He claimed, however, that he ordered two busses early in November, and although one of these busses was delivered to him during that month it appears that he made no attempt to put it in operation.

We think it clear, from appellant's own testimony, that he attempted no more than a token operation over a part of his route on and after April 1, 1942. There is utterly lacking any evidence of operation in good faith on the part of appellant. Section 14, division (a) of Act 367 of 1941 is as follows: "(a) Certificates, permits and licenses shall be effective from the date specified therein, and shall remain in effect until terminated as herein provided. Any such certificate, or permit, or license, may, upon application of the holder thereof, in the discretion of the Commission, be amended or revoked, in whole or in part, or may upon complaint, or on the Commission's own initiative, after notice and hearing, be suspended, changed, or revoked, in whole or in part, for willful failure to comply with any provision of this act, or with any lawful order, rule, or regulation of the Commission promulgated thereunder, or with any term, condition, or limitation of such certificate, or permit, or license; provided, however, that no such certificate, permit, or license shall be revoked . . . unless the holder thereof wilfully fails to comply within a reasonable time, not less than thirty days, to be fixed by the Commission, with a lawful order of the Commission, commanding obedience to the provisions of this act, or to the rules or regulations of the Commission, or to the term, condition, or limitation of such certificate, or permit, or license found by the Commission to have been violated by such holder."

It is our view, and we so hold, that before appellant would be entitled to a period of thirty days within which to comply with the Commission's order it devolved upon him to show that he had in good faith begun operations within the time allotted by the Commission, or within a reasonable time thereafter.

In the instant case it is undisputed that appellant did not begin operations during the first thirty days allotted from the issuance of his permit. He did not operate during the 45-day extension period allotted him at his own request on November 26, 1941. In fact he made no attempt to begin operations until approximately eighty days beyond January 10, 1941, the last day of his 45-day extension, and, as noted above, these operations were no more than token operations. We conclude, therefore, that on the record here the judgment is correct and should be and is affirmed.

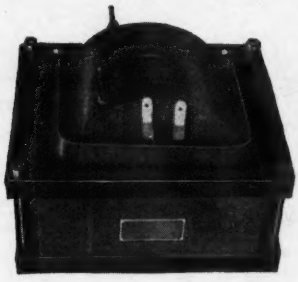
Industrial Progress

Selected information about products, supplies and services offered by manufacturers. Also announcements of new literature and changes in personnel.

Equipment Notes

Armored Insulation Plate Supply Transformer

To overcome the effects of high voltage aging, the engineering laboratories of The Acme Electric & Manufacturing Company of



Cuba, New York, have developed an armored-insulation High Voltage Plate Supply Transformer.

Rated at 3,300 volts, 1.8 amperes secondary, this transformer is intended for transmitter service for DC rectifier systems. Sturdily constructed throughout, but with special emphasis being placed on the adaptation of its insulation, it is especially suitable for continuous service of radio transmission, according to the manufacturer.

Special engineering bulletin may be obtained from the manufacturer.

Fireproof Sweeping Compound

A new fireproof, oil-absorbent floor cleaning compound, called Fibre-Tex, manufactured by Lacey-Webber Co., Kalamazoo, Mich., is said not to burn even when the flame of a blowtorch is played directly upon it, nor as the result of spontaneous combustion.

It is also claimed for Fibre-Tex that it is highly absorbent of oils and grease and has an active cleaning effect upon floors on which it is consistently applied.

Complete Emergency Lighting Unit for Wartime Service

Requiring no fixtures or wiring other than plug-in connections to the AC supply, the new Exide lightguard emergency lighting unit for wartime service is announced by The Electric Storage Battery Company, Philadelphia.

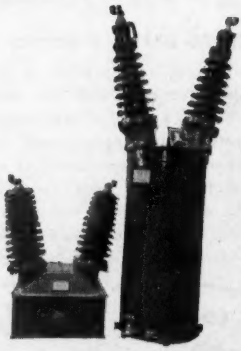
It has been designed to meet the need for a source of emergency light in war plants, arsenals, ordnance plants, shipyards, factories, and other places where wartime activity has increased the potential dangers resulting from power-line failure, fires, and sabotage. It throws a beam of light 50 ft. wide a distance of 150 to 200 feet, covering an area of 7,500 sq. feet.

The unit weighs only 47 pounds and can easily be moved from its customary position during a fire, accident, explosion or air-raid, for use in rescue work.

Descriptive literature may be obtained by addressing The Electric Storage Battery Company, 19th Street and Allegheny Avenue, Philadelphia.

Small Outdoor Transformers

General Electric announces a new line of two-bushing outdoor potential transformers, type E-236, rated 24 to 69 kv, 50/60 cycles, which effect substantial reductions in size. The



height of the new transformers (which supersede the type E-116) has been reduced 15 to 50 per cent, weight has been reduced 10 to 60 per cent, and liquid volume, 45 to 90 per cent, depending on the rating of the transformer.

These reductions mean that the transformers can be mounted up in the substation structure with the small-size G-E current and single-bushing transformers. Mounting in the struc-

Autocar's job is still DELIVERY!

In a double sense, Autocar's task is still delivery . . . delivery *of* the smashing blows that win battles . . . delivery *from* the worst a powerful enemy can dish out. It is doing both these jobs simultaneously and well on the world's fighting-fronts—for our Army, our Navy, our Marines and our Air Forces.

When all this is over and done with, Autocar will again deliver heavy-duty, money-making, money-saving performance for private enterprise. It will perform these peace-time jobs better than ever, for Autocar in uniform is training to be stronger, more agile, more dependable. Factory-equipped Autocar branches will help you keep your pledge to the U. S. Truck Conservation Corps.

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SERVICED BY FACTORY BRANCHES FROM COAST TO COAST

Equipment Notes (Cont'd)

ture simplifies primary (high-voltage) connections, saves valuable ground space, and eliminates the need for constructing a separate foundation.

Publication GEA-3982 describes in detail the new outdoor potential transformers.

Multiform Insulators

A new line of electrical insulation known as Multiform Insulators is announced by the Corning Glass Works, Corning, N. Y. This development provides the electrical industry with a new insulation supply at a time when war requirements are straining existing facilities.

The Multiform process involves a combination of cold-molding batch materials and subsequent fusing. Finished ware, in contrast with the more familiar types of glassware, is opaque or translucent; but it is a true glass. The process has made available products that run the gamut from small insulating beads, several thousand to the pound, to large insulators weighing twenty-five pounds or more. Countersunk and tapped holes are practicable, as are both external and internal threads and grooves.

In dielectric strength, the new Multiform Insulators have slightly lower values than do conventionally formed products of the same composition. The dielectric strengths—500 volts per mil or more—are sufficient, however, for all ordinary applications and, generally, are much higher than the dielectric strengths of other ceramic products.

New Size 2 Linestarter

For pumps, fans, machine tools, and similar machines, a new size 2 Class 11-200 Linestarter requiring less than half the mounting space of former units without sacrifice of wiring space is announced by Westinghouse Electric & Mfg. Company, East Pittsburgh, Pa.

This compact Linestarter designed for group mountings, built-in applications or remote mountings has a new clapper-type armature with knife-edge bearings. It utilizes double-break silver to silver contacts, thus eliminating shunts and reducing maintenance. Overload relays are reset either by hand or automatically. On applications requiring sequence or auxiliary interlocking, provision is made on the Size 2 Linestarter for a total of four normally open or normally closed electrical interlocks.

Catalogs and Bulletins

Compressors and Pumps

Ro-Flo compressors and pumps of the sliding vane type are completely illustrated and described in a new 18-page bulletin released by the Allis-Chalmers Manufacturing Company, Milwaukee, Wisconsin. Smaller and of less weight than reciprocating machines or compressors of similar capacity, the Ro-Flo machines afford a valuable conservation of critical war materials.

Boilers and Combustion

This report of the Boilers and Combustion Subcommittee of the Prime Movers Committee, Edison Electric Institute, New York, contains statements by the subcommittee, operating companies and manufacturers on: boiler-pressure parts; pulverized fuel and combustion; combustion control and supervision; high-temperature superheater performance; external and internal boiler cleaning; oil and gas fuels; and stokers.

This report (publication No. J7) is available to members at $1.20 per copy and to non-members at $3.00 per copy.

Feedwater Proportioning Equipment

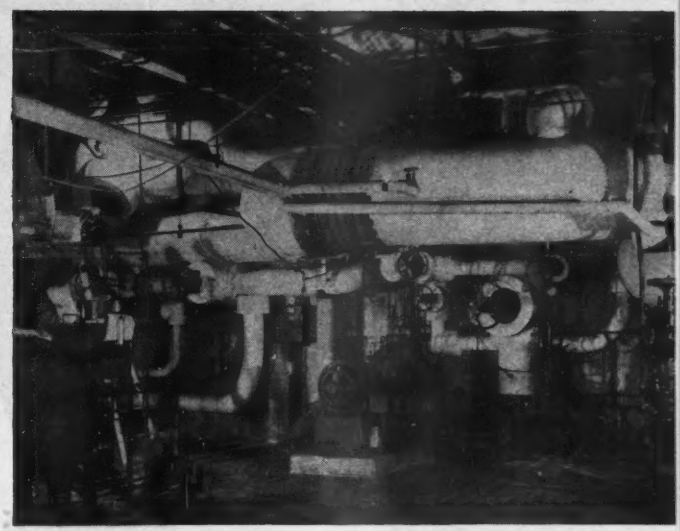
Proportioning equipment of the double displacement type which is readily adapted to the continuous proportioning of acid solutions to feed water is described in Bulletin 4009 issued by the Cochrane Corp., Philadelphia, Pa., and now available. The apparatus eliminates pumps, moving parts, etc., is simple in construction and depends upon the proportioning of one fluid to another by utilization of the pressure loss through the metering element, such as an orifice or Venturi tube.

The proportioning is by displacement in which two tanks are utilized and the chemical solution separated from the water by a layer of thin oil, such as kerosene.

The apparatus is designed for the incorporation of a pH controller, making the apparatus very accurate and sensitive. With this addition the pH value can be maintained in the

(*Continued on page* 41)

OES YOUR INSULATION INVESTMENT PAY A *FULL* RETURN?



FURNACES where insulation is ired to resist temperatures up 900° F., J-M Superex is widely gnized as the most efficient k insulation available today. dreds of installations prove its life and low maintenance.

FOR TEMPERATURES UP TO 600° F., you save by using J-M 85% Magnesia. For years the standard material for insulating power-plant equipment and steam lines, it combines light weight with permanently high insulating efficiency. . .

W MUCH MONEY you spend on fuel depends to a large ent on the answers to these two questions:

Are you using the *correct insulating materials?*

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To assure every saving possible with insulation, it will pay to call in a J-M Insulation Engineer. Let him study r requirements . . . his specialized technical training and erience will help you trace down and correct sources of t waste that may otherwise go unnoticed.

From the complete line of J-M Insulations, he can recommend exactly the *material* you need for greatest efficiency exactly the *thickness* you need for maximum returns.

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ON SUPERHEATED STEAM LINES, Johns-Manville Superex Combination Insulation provides an effective safeguard against costly heat waste. Built up of an inner layer of Superex and an outer layer of 85% Magnesia, this combination assures maximum heat resistance and insulating efficiency.

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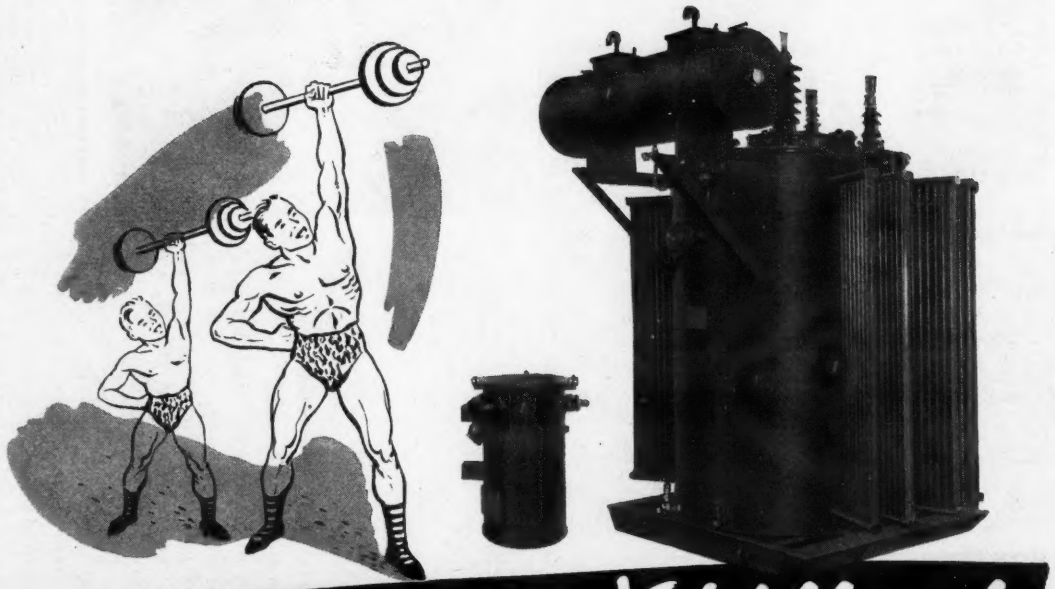

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1 CIRCULAR COILS Distribution as well as Power

3 BUILT-UP CORE LAMINATIONS Cores are constructed of 29 gauge, non-aging silicon steel. Individual laminations are insulated with a

"ole man". Yes, the good qualities that are built into Pennsylvania

1 CIRCULAR COILS Distribution as well as Power Transformers have Circular Coils. These coils have the maximum inherent mechanical and electrical strength and are balanced radially and axially against short circuit stresses.

2 VARNISH-TREATMENT No compounds are used in Pennsylvania Coils. Coils are treated in varnish at a maximum temperature of 105°C. This temperature leaves the insulation in a safe and pliable state. When baked, the varnish will not be affected by oil or heat.

3 BUILT-UP CORE LAMINATIONS Cores are constructed of 29 gauge, non-aging silicon steel. Individual laminations are insulated with a baked-on varnish. Since the entire core assembly is not treated in compound, the individual parts of the core can be disassembled and the coils removed.

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Catalogs & Bulletins (Cont'd)

water treated at a constant value irrespective of the changes in rates of flow and changes in the pH value of the water to be treated.

Fractional HP Motor

"How to Profit Now by Using Our Factory Service Plans for G-E Fractional-Horsepower Motors" is the subject of a recent bulletin (GEA-3989) issued by General Electric Company.

Under these plans, General Electric will exchange or repair any G-E fractional-hp motor, regardless of the type or make of appliance to which it is applied, should the motor become inoperative.

These plans, G-E reports, have proved themselves in regular use—they are not new and untried. Since their introduction, they have been proved valuable to the appliance merchant. Present conditions are increasing their value.

Electrical Construction

"The Story of Ziebarth Construction," a 24-page booklet in colors, has been issued by Fritz Ziebarth, Long Beach, Calif. The booklet depicts unusual projects completed by the Ziebarth organization, including the electrification and building of high-tension, steel-tower transmission lines from Boulder Dam to various pumping plants that bring water to Southern California; it takes in a dozen tasks performed by Ziebarth for the Bonneville Power Administration, and other big hydro-electric projects including Grand Coulee and Fort Peck Dams.

Also included is the story of the world's largest single electrical installation which Ziebarth recently completed at Basic Magnesium, Inc., at Las Vegas, Nevada.

Pumping Equipment for Industry

Pumping equipment manufactured by The American Well Works, Aurora, Ill., is described and illustrated in the following bulletins: Pumping equipment for industry, bulletin No. 243; Turbine pumps, water lubrication, bulletin No. 240; Turbine pumps, oil lubrication, bulletin No. 242; Two stage centrifugal pumps, bulletin No. 236; Double suction pumps, bulletin No. 239; Centrifugal pumps, bulletin No. 238.

Manufacturers' Notes

World's Largest "Egg Shell" Industrial Building

Completion of the world's largest concrete "egg shell" type industrial plant, designed to speed production of war equipment, is announced by the Westinghouse Electric & Mfg. Company, Transformer Division, Sharon, Pa.

Built with a minimum of critical materials, the new 1,100 foot long transformer tank factory provides more than 160,000 square feet of manufacturing space, enough to permit the em-

Manufacturers' Notes (Cont'd)

ployment of 300 to 400 additional workmen. The tank shop provides a special building for all structural work separate and apart from the assembly sections.

Other new structures in the Sharon war production expansion program include a new office building. This building, 120 feet long and 80 feet wide, will house additional offices, laboratories and drafting rooms.

Marmon-Herrington Advertising

Recognition of the important part of the trade press in promoting the security of post war markets, as well as in the winning of the war is shown in Marmon-Herrington's advertising schedule for 1943.

Even though there are no Marmon-Herrington vehicles available, except for military and most essential civilian services, President Bert Dingley points out that lack of actual sales contacts is all the more reason for maintaining advertising contacts, if the manufacturer hopes to return to markets left uncultivated during the war.

Dr. Tressler Heads G-E Food Research

Dr. Donald K. Tressler, an authority in food science, has joined the General Electric Company's Appliance & Merchandise Department at Bridgeport, Conn. He will be in charge of food research activities of the General Electric Consumers Institute.

Wartime Short Cuts

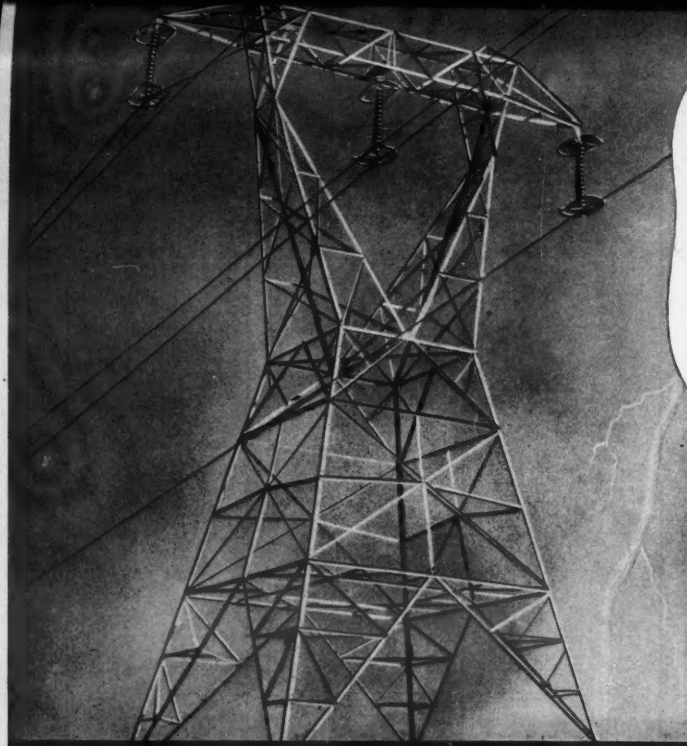
A Southern utility company recently increased the capacity of a bank of three 1,500 kva self-cooled transformers to 6,000 kva by adding four blowers to each of the transformers. Westinghouse engineers state that the added capacity cost $1.06 per kva, and used only 1,000 lbs. of steel and 50 lbs. of non-ferrous metals.

Due to adding 25,000 kw capacity at one station a Mid-western utility was faced with inadequate breaker protection. On the advice of Westinghouse engineers, De-ion Grids plus a few other parts were added to the existing CO-11 breakers to provide the increased breaker capacity. This effectively avoided the necessity for new breakers thus aiding the war effort.

Power for a new powder plant in the South recently gave utility engineers a temporary headache. WPB wanted the load to be handled without purchase of any new major equipment. The problem was solved through installation of seven Westinghouse hood-type blowers which gave the station 25 per cent increased capacity, enough to supply the powder plant.

"Fair-Weather" Power Highways Won't D..

When power fails, production grinds to a stop.



When power fails, production grinds to a stop. Important in the dependable delivery of power are the transmission towers that support the power lines. Not surprising, therefore, that operating engineers everywhere turn to Blaw-Knox transmission towers. Engineered into them is the satisfying certainty that they will not only make a good appearance during fair weather, but that they will withstand the stresses of storm, flood and frost. Because they are correctly designed, fabricated and galvanized, their maintenance cost is extremely low. A discussion is invited with regard to any power transmission problem.

BLAW-KNOX TRANSMISSION TOWERS

BLAW-KNOX DIVISION OF BLAW-KNOX COMPANY 2013 FARMERS BANK BUILDING, PITTSBURGH, PA.
NEW YORK • CHICAGO • PHILADELPHIA • BIRMINGHAM

PROFESSIONAL DIRECTORY

● This Directory is reserved for engineers, accountants, rate experts, consultants and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, financing, design and construction.

PROFESSIONAL DIRECTORY (*continued*)

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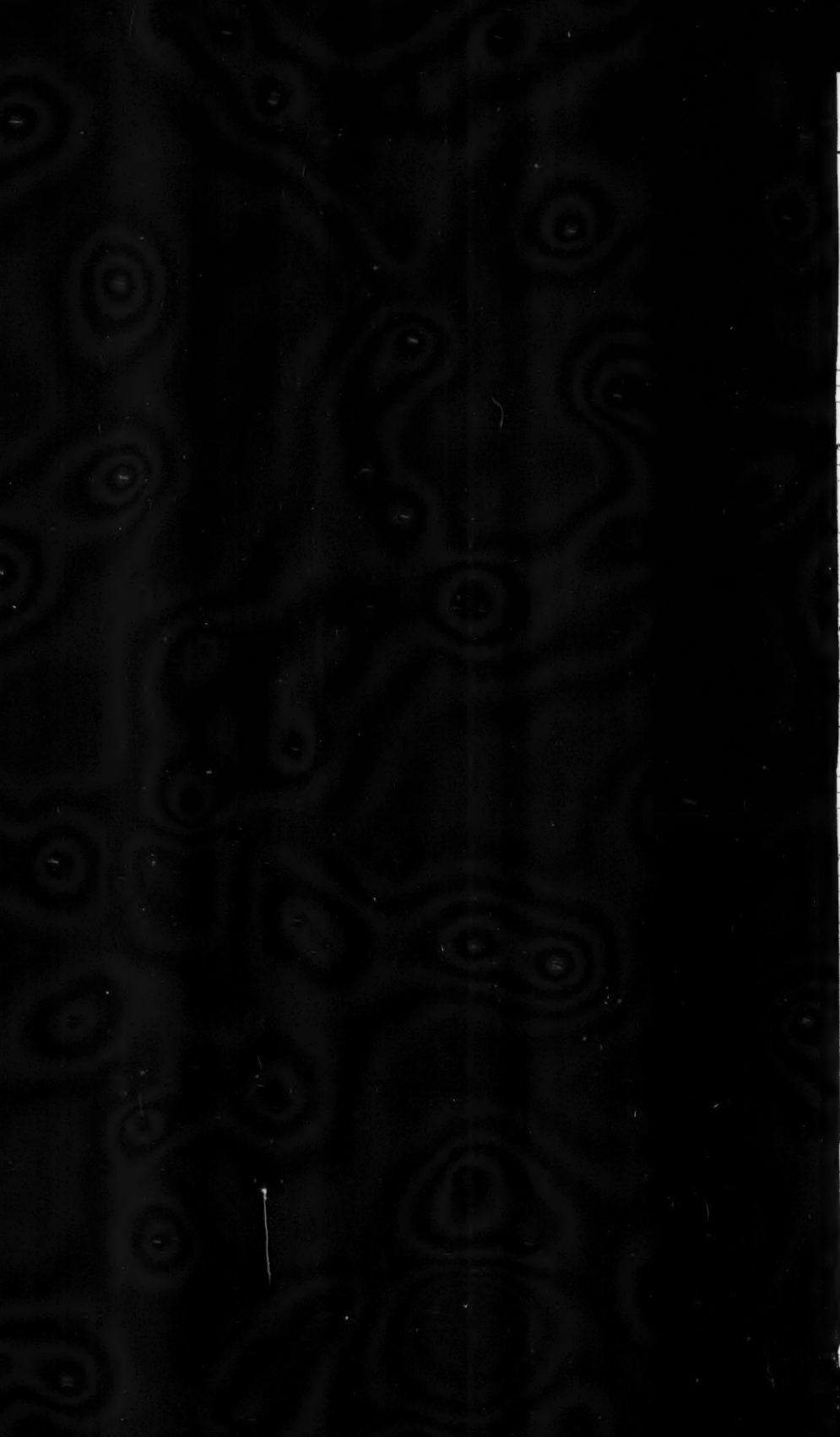
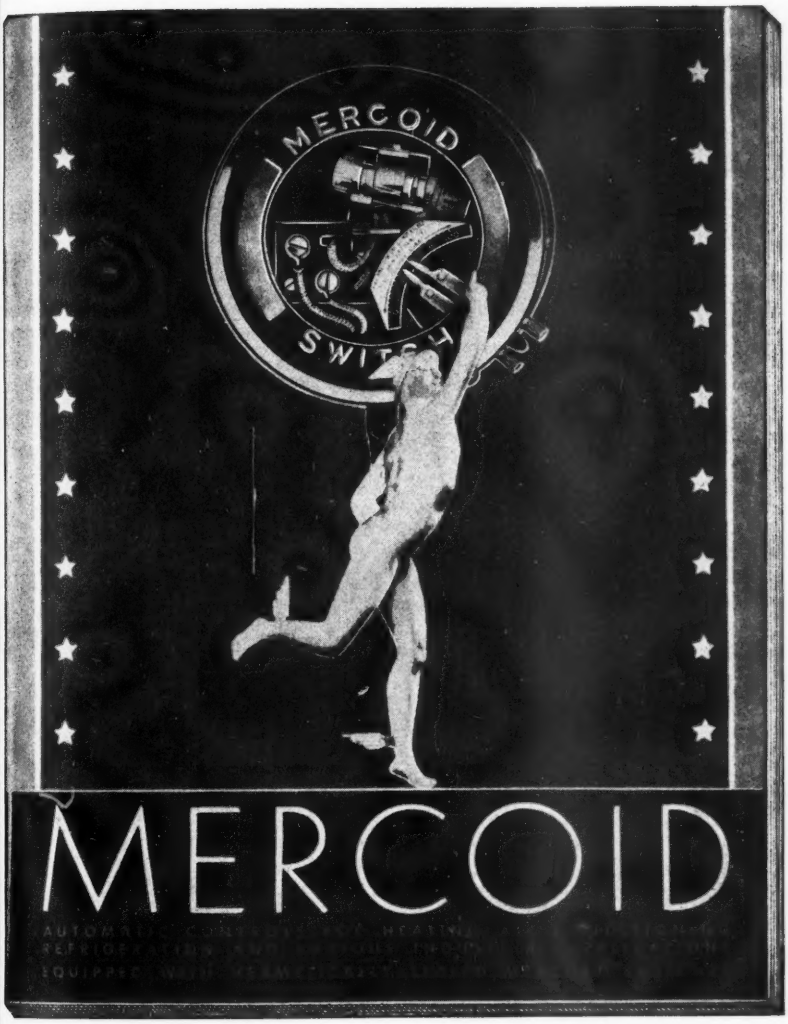
PROFESSIONAL DIRECTORY
(concluded)

INDEX TO ADVERTISERS

[The Fortnightly lists below the advertisers in this issue for ready reference. Their products and services cover a wide range of utility needs.]

* Fortnightly advertisers not in this issue.



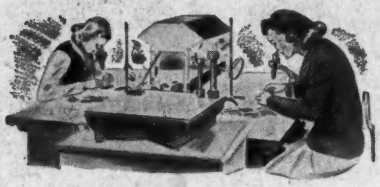


THE MERCOID CATALOG IS A GOOD REFERENCE BOOK WHEN IN NEED OF AUTOMATIC CONTROLS. A COPY WILL BE SENT UPON REQUEST.

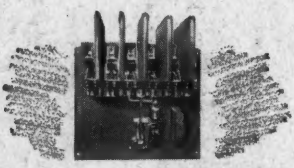
The Mercoid Corporation, 4219 Belmont Avenue, Chicago, Ill.

Electrical Ideas in Action!

HELPING TO MEET AMERICA'S WARTIME NEEDS



MICROSCOPIC FLAWS on metal surfaces are more easily detected when inspection is carried out under sodium light, according to recent experiments in the G-E Illuminating Laboratory. The explanation lies in the monochromatic quality of the light, which permits a sharper eye-focus because the light is all of the same wave length. In addition, the yellow wave band falls in the region of maximum eye sensitivity.



THE ARC-BACK PROBLEM, in circuits where one or more mercury-arc rectifiers are employed, is being successfully met with this new G-E air circuit breaker (Type AG-1). Use of the new breaker lessens the possibility of power interruptions where direct current is used for purposes such as the manufacture of aluminum and other electrochemical processes. A high-speed current directional trip starts the action of the breaker in less than one-half cycle.

MEASUREMENT OF THE "CREEP" metals, an operation which formerly quired constant observation of the sample under test through a micros is now done automatically by an electr device—at the General Electric Rese Laboratory. An "electric eye" wat the interruptions of a light beam, m it possible to measure an extension wire sample as small as 1/10,000 o inch while it is being heated in a cylinder.

YOUR ENGINEERS serving industry other users of electric energy have a portant war job to do in helping to the most of our power resources. Elec ideas such as these, though some minor in themselves, can add up BIG widely applied—frequently saving en man power, and critical materials. Ge Electric is ready to assist in the cons conservation by supplying further info tion or application aid wherever better trical utilization can help to win the

General Electric, Schenectady, N. Y.

The Army-Navy "E", for Excellence in the manufacture of war equipment, now flies over six G-E plants employing 100,000 men and women.

GENERAL ELECTRIC

301-13E-170